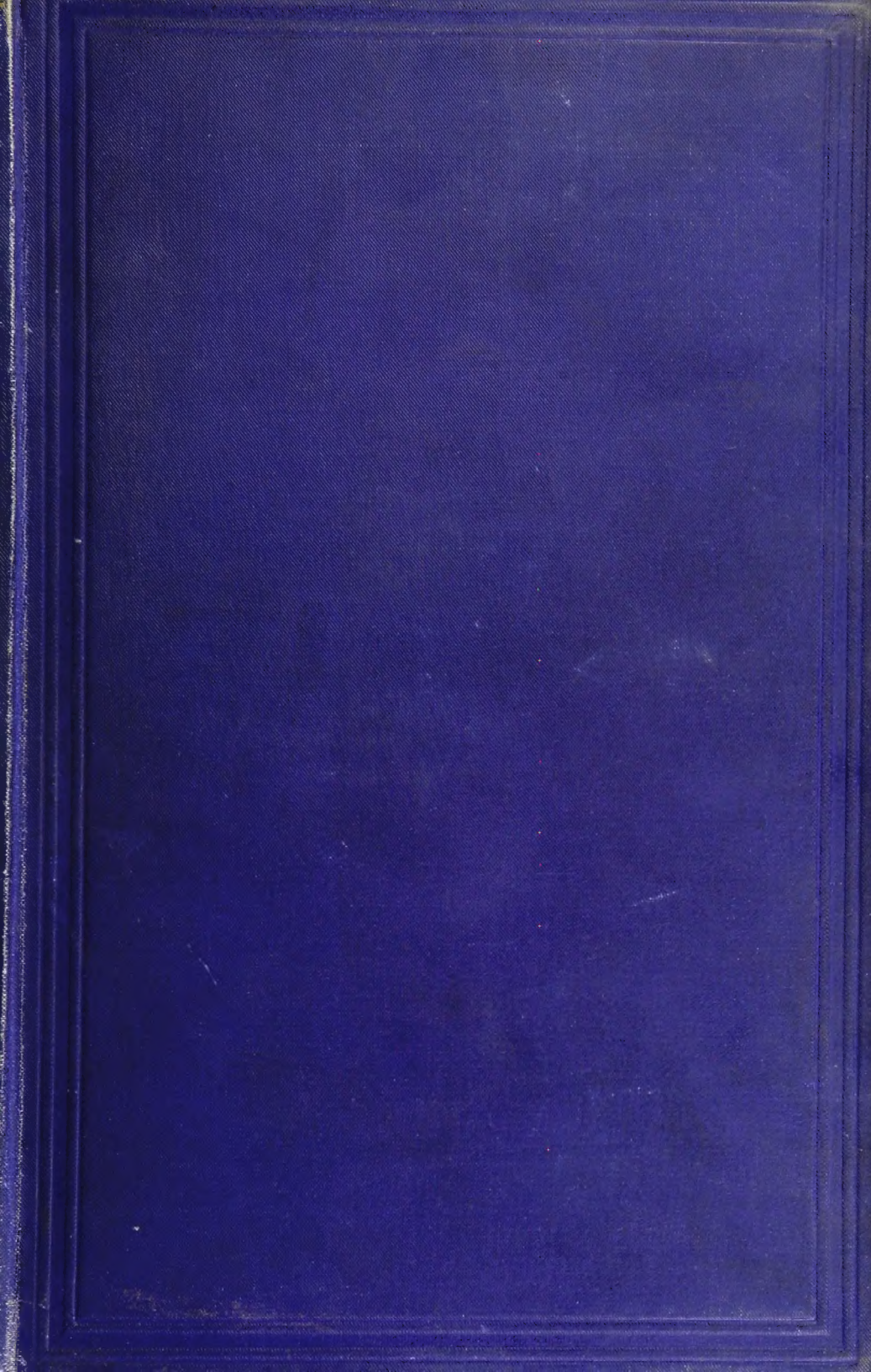




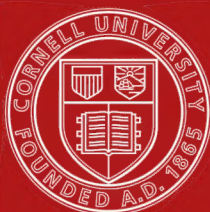
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RYDE'S
REPORTS OF RATING APPEALS
1891-1893.

Reports
OF
RATING APPEALS

HEARD BEFORE THE
COURT OF APPEAL, THE QUEEN'S BENCH DIVISION,
THE LONDON QUARTER SESSIONS
AND
THE HOUSE OF LORDS

DURING THE YEARS

1891—1893.

BY
WALTER C. RYDE, M.A.

Of the Inner Temple, Barrister-at-Law.

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PREFACE.

THIS Volume is a continuation of the "Reports of Rating Appeals, 1886—1890," already published. The Editor's aim has been to give a complete series of reports of all Rating Appeals heard before the Court of Appeal and the Queen's Bench Division (whether such appeals related to property within or without the metropolis), and of the cases heard before the London Quarter Sessions during the last three years; together with a report of the decisions recently given by the House of Lords with reference to the rating of the sewers and sewage works vested in the London County Council. It is probably true that no case having as far-reaching consequences has been decided by any Court since the House of Lords decided the *Mersey Docks Cases* in 1865. The principles now laid down by the House of Lords will govern the rating of all property occupied for "public purposes" and vested in municipal corporations and other local authorities, whether that property consist of sewage works, gas or water works, schools, libraries, town halls, baths, workhouses, or any buildings or offices used for the purposes of Local Government. Practically the whole of the modern Case Law dealing with the rating of such property will be found in this Volume and the "Reports of Rating Appeals, 1886—1890."

This Volume is complete in itself, but it has

been thought unnecessary to reprint the Statutes which, with the Orders made by the London Quarter Sessions, were included in the Appendix to the earlier volume.

The number of appeals entered in 1891 against the metropolitan valuation lists, was far greater than the number entered in any year since the passing of the Valuation (Metropolis) Act, 1869. The hereditaments to which the appeals related included gasworks and mains, docks, railways and railway stations, wharves, warehouses, manufactories of every description, a county lunatic asylum, poor-law schools, public baths, artizans' dwellings, volunteers' drill-halls, the Grosvenor Gallery, and the Agricultural Hall.

The hereditaments dealt with in the appeals decided by the Queen's Bench Division and the Court of Appeal during the last three years, and reported in this Volume, have also been of the most heterogeneous description, including industrial schools, police officers' quarters, tithes, volunteers' drill-halls, canals, tunnels for draining mines, advertisement hoardings, the gas mains of a municipal corporation, docks and railways, in addition to the sewers and sewage works, which were also the subject of the decisions of the House of Lords already mentioned.

It will be found that (even among the cases decided by the London Quarter Sessions) by far the greater number of the cases in this Volume deal with principles of rating, which apply equally within or without the metropolis. In some of the cases decided by the London Quarter Sessions, where the hereditaments to be valued

were of a peculiar character, or where questions of law or of principle were raised, it has been thought desirable to give a report, even though the decision of the Court turned mainly on questions of fact. From the reports of such cases, a lawyer or a valuer will at least learn what points will, or may, be raised in similar appeals; and he will be able to gather arguments, if he cannot cite authority, in support of the propositions which he wishes to establish.

The Editor has endeavoured, in reporting some of the cases at Quarter Sessions, to indicate, in a note, the inference which may be drawn as to the principle adopted, but not expressed, by the Court. For the correctness of that inference, and for the notes generally, the Editor alone is responsible.

To the names of the cases cited are added the dates of the decisions (a matter of great importance in rating law), and in the Table of Cases Cited will be found a reference to the contemporary reports.

It is perhaps too much to expect, or even to hope, that this Volume, which contains a mass of figures, will be absolutely free from errors. The Editor has found in his previous Volume mistakes which may be counted on the fingers of one hand. If this Volume prove to be as accurate, it will be in great measure due to the assistance courteously given by both lawyers and witnesses in many of the cases reported.

W. C. R.

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ABBREVIATIONS USED IN THE REPORTS.

Met. Rat. App. *for* "Reports of Metropolitan Rating Appeals," 4th edition (1885) by the present Editor.

Ryde's Rat. App. (1886-90) *for* "Reports of Rating Appeals, heard before the Queen's Bench Division, the Court of Appeal, Assessment Sessions, and London Quarter Sessions" (1890), by the present Editor.

R. R. *for* "Revised Reports," edited by Sir Frederick Pollock.

Rating Appeals.

Part I.

CASES

HEARD BY THE

LONDON QUARTER SESSIONS,

1891—1893.

SAUNDERS v. ST. MARY, LAMBETH.

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Feb. 4, 6, 11.

*House let in separate Tenements or Flats—Separate Occupation—
Rateable Hereditament—Valuation (Metropolis) Amendment Act,
1884 (47 Vict. c. 5)—Practice—Amendment of Case—Costs.*

The appellant was the owner of seventy houses, each having one front door opening upon the street. Neither the landlord nor any person employed or appointed by him slept or resided in any of the houses. Each house consisted of two flats, or tenements, one above the other, each flat being complete in itself, and let to a separate tenant, but there was no door separating the upper and lower flats. Each tenant had a key of the street door, and the landlord had none. The passage was used in common by the tenants of both flats, the staircase only by the tenant of the upper flat.

Held, that each flat was a separate rateable hereditament.

The appellant, not having stated sufficient particulars in his case, leave was given to him to amend, for which purpose an adjournment was necessary. The appeal having been allowed, the respondents were ordered to pay the general costs of the appeal, and the appellant was ordered to pay the costs of the adjournment.

APPEAL, under the Valuation (Metropolis) Amendment Act, 1884, s. 2, by the owner of about seventy dwelling-houses, situated in Crimsworth Road, Goldsboro Road,

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and Thorpark Road, in the parish of Lambeth. The appellant contended that each house should be rated in two parts as separate rateable hereditaments, and not (as in the Valuation List appealed against) as one hereditament.

In the notice of appeal the following description of the houses was set out:—"Each hereditament comprises two tenements or flats—upper and lower—which are let to different tenants. . . . Each of these flats has three rooms, and scullery, w.c., drying-ground, dust-shoot, and other conveniences, so that the tenant of the upper flat has no occasion or right to go on the lower flat (or *vice versâ*) for any accommodation, although, of course (as in many other larger buildings let and assessed in flats or chambers), the two flats in each house have only one common front door and passage on the ground floor for access from the street."

It was also proved that (except in the case of two houses) each flat was separately let at about 7s. or 7s. 6d. per week, the landlord doing all the repairs, and paying all rates and taxes. There was no written agreement. Each tenant had a separate key of the front door, and the landlord had none, and in no case did the landlord, or any servant of his, reside in any part of the premises, so that, in case both tenants were out, neither the landlord nor his servants could obtain admission. In the agreements with the tenants it was said to be understood, but apparently was not expressly provided, that the staircase belonged to the upper flat, and was let to the tenant of that flat. There was no door at the foot of the staircase to prevent the tenant of the lower flat from going up. At the front door there was no separate bell or knocker for the two flats; and it was the custom for persons to knock twice for the upper floor, and once for the lower; and the tenants of the two flats answered the door accordingly. The cleaning of the passage was left to the tenants to arrange between themselves. There was a common dust-bin at the back of each house, the dust from the upper flat being thrown into it down a shoot. To

empty the dust-bin it was necessary in some cases to pass through the lower flat, entering by the front door from the street.

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Castle, Q.C. (*Stewart* with him) for the appellant: The amounts at which the several houses are rated are not disputed; they are all severally rated at sums above 20*l.*, and the appellant claims to have each house divided into two hereditaments, the effect of which will be to reduce the assessment in every case to less than 20*l.*, which is the limit fixed by s. 3 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), with regard to property situate in the metropolis. The appellant will then be entitled to claim a commission under that Act on payment of the rates in place of the occupier. The facts of this case bring it within the decision in the Westminster Chambers Case (*R. v. St. George's Union* [1871], L. R. 7 Q. B. 90; Met. Rating App., pp. 82—84), where the Queen's Bench held 117 different sets of chambers in Victoria Street to be separate rateable hereditaments. Cockburn, C. J., said: "The criterion which has been adopted in such cases, and which is, perhaps, the most convenient, and the only one, is, whether the landlord retains the control of the outer door, and has shown by his retaining the control of the outer door that he has the control of the whole of the premises." In that case the outer door was under the control of a porter appointed by the landlord and residing on the premises, and this fact was relied on, as showing that the landlord retained the control of the outer door. It was, however, found as a fact that the porter acted as the servant of the tenants, and his control was, therefore, held to be theirs. There is not even this fact in the present case on which the respondents can rely; and, therefore, *a fortiori* the flats must be held to be separate rateable hereditaments. The same test (as to the control of the outer door) was adopted by the Court of Appeal in *Bradley v. Baylis* [1881], 8 Q. B. D.

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195, in distinguishing between lodgers and occupying tenants, for the purposes of Parliamentary franchise. Jessel, M. R. (*Ib.* at p. 219), said: "Where the landlord lets out the whole of the house into separate apartments and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership, for the term demised, and retains no control over the house, there, in my opinion, the inmates are occupying tenants, and are capable of being rated as such." All the conditions required by this definition are fulfilled in the present case; and the description given by Jessel, M. R., is called by him "an extreme case"; *i.e.*, removed as far as possible from the case of a lodger.

The facts were proved by Mr. W. G. Field, who collected the appellant's rents, and the respondents called no witnesses.

Poland, Q.C. (*Biron* with him) for the respondents: Each case of this kind is to be decided on the special facts, and the facts of this case are very different from those of *R. v. St. George's Union* [1871], L. R. 7 Q. B. 90. Here there is a mere parol agreement for a weekly tenancy, similar to that of an ordinary lodger; in *R. v. St. George's Union* there was a written agreement equivalent to a lease for a term, the parties to the contract being therein called "lessor" and "lessee" respectively. In the present case the upper flat is not more distinct from the lower than are the upper floors of every house in London from the lower. It is true that each flat is complete in itself, but that is a mere matter of convenient arrangement, and there is no structural severance. Each room opens directly on the staircase or passage, and there is only one outer door shutting out the public from both sets of rooms alike, as in the case of all ordinary houses. In *R. v. St. George's Union*, each set of rooms had an outer door, like the various sets of chambers in the Inns of Court, and so was

structurally severed from the common staircase used by the tenants on all the floors. If it be suggested in the present case that the two flats in each house are separate rateable hereditaments because separately let to different tenants, it is a sufficient answer to say that, by parity of reasoning, every room let to a lodger is a separate hereditament distinct from the rest of the house. Moreover, in the case of two of the houses, both flats are let to one and the same tenant; as to these two, therefore, the respondents must succeed. The question in this appeal has to be decided with reference to the Valuation (Metropolis) Act, 1869, and 43 Eliz. c. 2, whereas *Bradley v. Baylis* ([1881], 8 Q. B. D. 195) was decided on the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5, and the Representation of the People Act, 1867 (30 & 31 Vict. c. 102). It may well be that questions as to occupation may be answered differently as to different statutes, and of this the *Westminster Chambers Case* is a good illustration. For whereas the chambers were held to be for the purposes of poor rate, 117 distinct hereditaments (see L. R. 7 Q. B. 90 [1871]), the same chambers were held to be, for the purpose of inhabited house duty, only seven dwelling-houses (see L. R. 10 Ex. 305 [1875]; affirmed [1876], 1 Ex. D. 469, Met. Rating App. 84). [He also cited *The Yorkshire Fire and Life Insurance Co. v. Clayton* [1881], 6 Q. B. D. 557, decided with regard to inhabited house duty.]

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Castle, Q.C., in reply: Occupation is the sole test of rateability under 43 Eliz. c. 2, and the same test is applied under the Representation of the People Act, 1867, as was expressly decided in *Bradley v. Baylis* [1881], 8 Q. B. D. 195. Under these two statutes, therefore, the question is the same, and therefore the decision in *Bradley v. Baylis* governs this appeal. The question with regard to the inhabited house duty, it is admitted, may be different. In the present case the entry in the Valuation List must

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be wrong, whatever be the decision of the Court; for although each house is assessed in one sum, as one rateable hereditament, the names of both tenants are entered as occupiers. If the house is one hereditament, they must be lodgers merely.

[In the course of the argument it was pointed out that the appellant's case did not specify the exact form of entry which he desired to be made in the valuation list; nor did it state in what proportions the total assessment on each house was to be divided between the two flats; and it was further pointed out that no evidence of the separate values of the two flats had been given. The respondents were ready to assent to any apportionment of value if the Court should decide each flat to be separately rateable. The case was adjourned to enable the appellant to amend his case, and to make the necessary apportionment of value. These points were material only to the decision with regard to costs.]

Cur. adv. vult.

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Feb. 11.

The CHAIRMAN (Sir P. H. Edlin, Q.C.) read the following judgment: We have considered the facts brought before us on this appeal and the cases cited in support of the arguments on both sides. There are in each of these several houses two floors, or residential flats as they are called, which have been constructed for distinct and separate occupation, each having its separate domestic conveniences, and they are separately let to different tenants. The assessment has been made of each house as one hereditament, and Mr. Poland, on behalf of the assessment committee, has contended that these residential flats are not separate tenements, because there is a door shutting off the passage on the ground floor from the street—the passage being common to both tenants—and because there is no door separating this passage from the staircase leading to the upper floor. This staircase, how-

ever, is let exclusively to the tenant of the upper floor, and each tenant has a latch key to the street door. These may be facts to be noted in the application of the Revenue Acts and with reference to the Parliamentary franchise, but we fail to see that they substantially affect the occupation, which for all practical purposes is distinct. The appellant is the non-resident owner who has contracted to pay the rates, and he claims to be rated under the Valuation (Metropolis) Amendment Act, 1884. We are of opinion that he is entitled to have these flats separately assessed for rating purposes. Our judgment is, therefore, for the appellant, but the questions involved are important, and if desired we will state a case for the opinion of the High Court (a).

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Poland, for the respondents, asked for a case, which was granted.

Castle asked for the appellant's costs.

Sir P. H. EDLIN: You are entitled to some costs. But the appellant's case almost embarrassed the Court, and had to be amended, and an adjournment was rendered necessary. The respondents are to have the costs of the day on which the appeal was mentioned again. The appellants are to have the general costs of the appeal, and of to-day; but not the costs of amending their case.

Appeal allowed.

(a) No distinction is made in the judgment with regard to the two houses in which the flats, though capable of separate occupation, were not in fact let to separate tenants, the two flats in each house being occupied by, and let to one person. With the decision in the above case, compare *Rouse v. City of London Union*, Ryde's Rat. App. (1886-90) 124. The decision reported above seems to be confirmed by the decision of the Court of Appeal in *Allechurch v. Hendon Union*, [1891] 2 Q. B. 436.



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Feb. 6.

THE TRUSTEES OF THE ROYAL MASONIC INSTITUTION FOR
GIRLS v. THE WANDSWORTH AND CLAPHAM UNION.

School for Daughters of Freemasons—Absence of Profits—Structural Value of Buildings—Cost—Rate of Interest thereon—Practice—Buildings in course of construction.

The appellants were assessed at 2,500*l.* gross and 2,100*l.* rateable value, in respect of land and schools for the education of the daughters of freemasons. At the date of the hearing of the objection before the assessment committee, certain new buildings were being erected on the land occupied by the appellants, which were expected to be in occupation before the list would come into force. By consent, the assessment committee in deciding on the objection took into account the new buildings, and increased the assessment to 3,720*l.* gross and 3,100*l.* rateable value. On the hearing of the appeal, the Court, at the request of the appellants and with the consent of the respondents, also took the new buildings into account. The buildings, which had been erected at various times, had cost altogether 71,000*l.*; and the land (together with some buildings thereon) had been purchased at various times for 18,341*l.* The schools were carried on as a charitable institution, no charges being made.

The Court reduced the assessment to 3,300*l.* gross and 2,750*l.* rateable value, but made no order as to costs, because the appellants had claimed a much larger reduction than was allowed.

Semble, that the Court had jurisdiction to determine the gross and rateable values of the new buildings which were not occupied at the date of the objection before the assessment committee.

Semble, in the case of a charitable institution, where profit is not the object of the occupation, the Court will, in order to arrive at the rateable value, take some lower percentages than four per cent. on the value of the land and five per cent. on the structural value of the buildings.

THE hereditaments, the subject of this appeal, consisted of the schools and the land occupied therewith, known as the "Royal Masonic Institution for Girls," situated at St. John's Hill, Battersea Rise.

The overseers had assessed the property, as it existed in May, 1890, at 2,500*l.* gross and 2,100*l.* rateable value.

At the date of the hearing of the objection before the assessment committee, certain new buildings (forming additions to the existing schools, and erected on land forming part of the grounds already occupied by the appellants) were being erected, but were expected by the appellants to be completed and ready for occupation before April 6th, 1891, on which date the valuation list would come into force under sect. 43 of the Valuation (Metropolis) Act, 1869. In order to avoid the necessity of a second objection and appeal against a supplemental list, the assessment committee (with the consent of the appellants), at the hearing of the objection took into account the new buildings, and decided on the question of value as if those buildings were already completed and in occupation. The assessment on the whole property was fixed at 3,720*l.* gross and 3,100*l.* rateable value. Against this decision the appellants appealed, claiming a reduction to 1,800*l.* gross and 1,500*l.* rateable; or, alternatively (if the new buildings were not to be taken into account), to 1,500*l.* gross and 1,250*l.* rateable value. The appellants had given to the overseers notice that at the hearing of the appeal they intended to ask the Court to fix the value of the whole property, including the new buildings.

The objects of the institution were "to maintain, clothe, and educate the daughters of Freemasons." No payment was made by the parents or guardians of the girls, and the institution was supported entirely by voluntary contributions. The total area of land occupied was 4 acres, 2 roods, 20 perches, and it had been acquired by the appellants from time to time in small portions, at a cost of 18,341*l.* (which, however, included the price of some houses already standing). The buildings already occupied, or in course of construction, were erected at various times, at a total cost (including the cost of alteration and reconstruction) of 71,000*l.* Of this sum about 30,000*l.* was derived from the subscriptions at a festival held, in 1888, to commemorate the centenary of the institution.

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The following contention was set out in the appellants' case :—

“The appellants will contend that, inasmuch as no profit is, or can be, made by carrying on the institution, the rateable value is not to be arrived at by calculating such a percentage on the structural value of the buildings and land as would be required by a person investing money in land and buildings for the sake of making a profit therefrom.”

Poland, Q.C. (*Walter C. Ryde* with him), for the appellants. It is admitted that, since the decision of *R. v. School Board for London* [1886], 17 Q. B. D. 738; *Ryde's Rat. App.* (1886—90), 235, in cases where no profit is made by the occupation, the capital value of land and buildings may be looked at as evidence of rateable value: the Court must not, however, look at the actual cost where, as in the present case, it is above the true value. The appellants have been obliged to purchase the land piecemeal, and in many instances have been compelled to pay exorbitant prices. The cost of erecting these buildings is also above the structural value. The appellants desire the value of the whole property (including the new buildings) to be fixed by the Court on the hearing of this appeal. [To this proposal the respondents assented, and the Court proceeded with the hearing of the appeal accordingly.]

The following evidence was given on behalf of the appellants :—

Mr. H. A. Hunt, who had been the surveyor of the institution and who had superintended the erection of the buildings, proved the facts. In one instance the appellants had been compelled to pay 6,500*l.* for a piece of land which, with the house standing on it, was actually let at 100*l.* a year only. He estimated the value (as a bare site) of the land, now occupied by the appellants, at 13,120*l.*; he thought the premises were suitable only for an institution such as the appellants', and that for such an institu-

tion 1,800%. a year was the utmost rent that could be obtained.

Mr. Edward Ryde said that the buildings having been erected at about fourteen different times had cost more than their present structural value. For 50,000%. premises equally suitable as a school, but further from London, could be provided. If the buildings were removed the value of the land in the market would be, in his opinion, about 14,000%. He estimated the gross value of the premises, in their present condition at 1,800%, and the rateable value at 1,500%; these figures he arrived at by going through the buildings in detail, and putting a separate price on each part.

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G. E. Lyon (*Earle* with him) for the respondents: In the present case, as in *R. v. School Board for London* [1886], 17 Q. B. D. 738; *Ryde's Rat. App.* (1886—90) 235, the cost of land and buildings is the only possible basis for estimating rateable value. On the appellants' own figures the appeal fails; taking 4 per cent. on the cost of the land (18,341%), together with 5 per cent. on the cost of the buildings (71,000%), a rateable value of 4,284% is arrived at. And even if it be assumed that there is excessive ornamentation of the building, or any unnecessary expense, and 5 per cent. be taken on 55,000% only as the present structural value of the buildings, a rateable value of 3,484% is arrived at. The Assessment Sessions took 4 per cent. on the land and 5 per cent. on the buildings, as representing the rateable values when the *School Board Case* was before them (*Met. Rating Appeals*, pp. 385, 399, *et vide* p. 155).

The following evidence was given for the respondents:—

Mr. Spencer Chadwick estimated the fee simple value of the land at 4,000% an acre, but for the purpose of this appeal put it at 3,000%. Taking four per cent. on the value of four and a half acres, added to five per cent. on 57,474% (the structural value of the buildings), he arrived

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at a rateable value of 3,413*l.*, and, adding one-fifth thereto, a gross value of 4,095*l.*

Mr. R. W. Hedley, who had made the valuation adopted by the assessment committee, valued the land at 3,750*l.* an acre, or 150*l.* per acre per annum. He estimated the structural value of the buildings at 59,370*l.*; but, in order to make an allowance for anything that might be regarded as excessive ornamentation, he took five per cent. on 55,000*l.* only, with the ground rent, as the rateable value, which he calculated at 3,444*l.* Adding one-fifth thereto, he arrived at a gross value of 4,133*l.*

Mr. H. Holloway, a builder, estimated the structural value of the buildings at 62,868*l.*

The CHAIRMAN (Sir P. H. Edlin, Q.C.) in the course of the hearing pointed out that in the present case the buildings had not all been erected, as they stood, for their present purpose, nor had they been erected at one time, and that the appellants, in buying some portions of the land, had practically no discretion. The facts were therefore, in these respects, different from those in *R. v. School Board for London* (*ubi supra*).

The appeal was allowed, the assessment being reduced from 3,720*l.* gross and 3,100*l.* rateable value to 3,300*l.* gross and 2,750*l.* rateable. This was to include the new buildings (above referred to), which were not completed at the date of the decision of the assessment committee (*a*).

(*a*) Although the Court did not explain the ground of their decision, it is obvious that (if they acted on the evidence as to structural value of buildings and value of land) they adopted some lower percentage than five per cent. on the value of the buildings added to four per cent. on that of the land, which was contended for by the respondents. If the structural value of the buildings be taken at 55,000*l.* (the lowest figures adopted by the respondents), and the land be put at 14,000*l.* (the highest figures supported by the appellants' evidence), and four per cent. be taken on both alike, a rateable value of 2,760*l.* is arrived at. If the value of the land be put at 13,500*l.* (the figures adopted by Mr. Chadwick), and that of the buildings at 55,000*l.*, and four per cent. be taken on both, the rateable value would be 2,740*l.*; or if Mr. Chadwick's figures be corrected for the land, so as to show the value of the *exact*

The CHAIRMAN said that, having regard to the fact that the appellants in their case had claimed a much larger reduction than had been allowed, the Court would make no order as to costs.

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MASONIC
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v.
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AND CLAPHAM
UNION.

WORDSWORTH v. ST. SAVIOUR'S UNION.

1891.
Feb. 3.

Practice—Petition entered after January 14th—Costs.

Leave was given to an appellant to enter an appeal after January 14th, on payment to the respondents of the costs of the application to the Court for such leave.

Lowe for the appellant asked for leave to enter a petition of appeal from a decision of Special Sessions.

The petition of appeal had in fact been lodged after January 14th, the date fixed by Ord. V. (1890), and was so entered in the printed list of appeals dated January 23. The exact date when the petition was lodged did not appear.

Lyon opposed the application, except on the terms that the respondents should have their costs of the application.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The application is a necessary one, and the respondents are entitled to costs (a).

Appeal entered.

area occupied by the appellants, the rateable value would be 2,755*l.*; the rateable value as fixed by the Court being 2,750*l.*

There is another method of calculation which gives the exact result arrived at by the Court, viz., to put the buildings at 55,000*l.* and the land at 18,341*l.*, which was the exact sum paid by the appellants for the land (including, in the case of one or two portions, a house standing thereon), and to take four per cent. on the value of the buildings (2,200*l.*) with 3 per cent. on the cost of the land (550*l.*), making a total of 2,750*l.*

(a) At the same Sessions, similar applications were made in other appeals, and granted on the same terms.

1891.
Feb. 12.

CHARRINGTON v. THE HAMLET OF MILE END OLD TOWN.

Mission Hall—Premises exclusively appropriated to Public Religious Worship—Absence of Profits—3 & 4 Will. 4, c. 30.

By 3 & 4 Will. 4, c. 30, certain exemptions from rateability are created in respect of premises appropriated to public religious worship.

The Great Assembly Hall (Mile End Road) was built for the purposes of the Tower Hamlets Mission, and was duly certified for public religious worship. The appellant, who was rated as the occupier, received no rents, and derived no profit or advantage from the occupation. The Court found, on the facts, that the Hall was not "exclusively appropriated to public religious worship."

Held, that the building was not exempt from rateability under 3 & 4 Will. 4, c. 30, although the appellant received no rents and derived no profit or advantage from the occupation.

APPEAL against an assessment of 500*l.* gross and 417*l.* rateable value, in respect of the "Great Assembly Hall," Mile End Road, which was used for the purposes of, or in connection with the Tower Hamlets Mission.

The appellant claimed that the hall was exempt from rateability under 3 & 4 Will. 4, c. 30, which enacts as follows:—

"1. From and after the 1st day of October, 1833, no person or persons shall be rated or shall be liable to be rated, or to pay to any church or poor rates or cesses, for or in respect of any churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act or Acts now in force: provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting-houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such

person or persons shall receive any rent or rents, or shall derive profit or advantage.

"2. Provided always, and be it enacted, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting-houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor."

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Alex. Glen for the appellant:—The hall is, on the facts, exempt under the statute. The land was bought by the appellant, and the hall with other buildings was erected for the purposes of the Tower Hamlets Mission. The whole property is vested in trustees upon trust to permit it to be occupied for "the worship of God, the preaching of the Holy Gospel, the holding of Bible classes, for discussions on matters of religion, and for the use of any means for the diffusion of Gospel truth, &c." [Sir P. H. EDLIN:—If the deed provides for exclusive appropriation to religious worship, and the actual user is for other purposes, surely the property is not exempt.] The main and substantial occupation is for purposes of religious worship; no profit or advantage accrues to the appellant from the Great Assembly Hall, which is duly certified for such worship (*a*). There are, adjoining the hall, a coffee-palace for the sale of non-intoxicant drinks; and also a book-stall, where books, papers, &c. are sold. These buildings are separately rated, and their rateability is not disputed. The proviso in s. 1 of 3 & 4 Will. 4, c. 30, shows that the Act contemplates the exemption of buildings, every part of which may not in strictness be "exclusively appropriated to public religious worship;" but if no profits be made, the exemption still attaches. If the Court is of opinion that the hall is not exempt altogether from rateability, the appellant contends that the assessment should be reduced (*b*).

(*a*) The learned counsel was apparently referring to 52 Geo. 3, c. 155, s. 2, as amended by 18 & 19 Vict. c. 81.

(*b*) The question of amount, though raised in appellant's case, was, in the result, not further discussed.

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Mr. F. N. Charrington, the appellant, proved that the land and buildings (excluding the organ) had cost 20,000*l*. The Great Assembly Hall was used exclusively as a Mission Hall, but not altogether, in the ordinary acceptation of the words, for purposes of public religious worship. For instance, in the previous winter, about 700*l*. had been distributed, in the hall, in relief of distress. This the witness regarded as analogous to the distribution of loaves in some of the City Churches. There were, in the hall, religious services (in the strict sense of the words) held on five nights in the week. During the winter there were, on Saturday nights, sacred concerts; there were also occasionally lectures, with dissolving views showing scenes in different parts of the world, Mr. H. M. Stanley's "Travels in Darkest Africa," &c., temperance lectures, and lectures which, as a rule, might be said to have a moral. The appellant had never in any year received any profit or personal advantage from the hall. It had been let for meetings to religious organisations or societies having the welfare of the people as their object. It appeared that the overseers had in 1890, on the ground that charges were made for admission, entered the hall in a provisional list; but this list was withdrawn (no doubt on the principle laid down in the *East and West India Dock Case* [1884], 13 Q. B. D. 364; Met. Rating App. 355). The appellant had given instructions, since the withdrawal of the provisional list, that no money should be taken at the doors; no money had been so taken, nor had the hall been let to any society. On one occasion it had been lent gratuitously to the organist for a performance of Sullivan's "Golden Legend," on December 6th, 1890. On the handbills advertising that performance it was stated that the concert was a subscription concert, tickets being issued to subscribers, and that there would be a limited number of free tickets, the holders of which would be expected to contribute to "*a silver collection*" made in the hall. The appellant explained that he imagined that if no money were

taken at the doors the building would be exempt; that he had not been informed of the taking of "*a silver collection*" in the building, and was not responsible for it; and that when he was informed he protested strongly against it. It appeared further that the hall had been used on August 21st, 1890, for a meeting of barge-builders, presided over by Mr. Tom Mann; and, again, on September 9th for a similar meeting. On September 2nd a meeting of "dockers" for the purpose of assisting Australian "dockers" was held in the hall. On November 15th, 1890, there was an entertainment by the "Royal Hold-fast Handbell Ringers." This was a temperance entertainment, but on the tickets of admission was printed: "*Please contribute to the collection in aid of the funds of the Mile End Old Town Ratepayers' Association.*"

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Houghton, for the respondents, was not called upon to argue, but referred to the decision of the Recorder of Worcester (Mr. Bosanquet, Q.C.), in *Booth v. Overseers of St. Martin, Worcester, and the Assessment Committee of the Worcester Union* [1884], 48 J. P. 441, as to the rateability of certain premises occupied by the "Salvation Army."

The CHAIRMAN (Sir P. H. Edlin, Q.C.): On the appellant's own evidence it is clear that this hall is not exclusively used for public religious worship. The latter part of the section [proviso?] does not cut down the previous enactment. The overseers have clearly dealt leniently with this property. The appeal must be dismissed with costs.

Appeal dismissed.



1891.
Feb. 13.

SIR COUTTS LINDSAY, BART. *v.* ST. GEORGE'S UNION.

Grosvenor Gallery—Profits—Evidence of Rateable Value—Practice—Costs.

The Grosvenor Gallery and the premises connected therewith were assessed at 2,937*l.* rateable value. If the rateable value was to be ascertained by reference solely to the profits actually made, the assessment would be merely nominal; if it was to be ascertained by comparison with the rental values of similar property in the neighbourhood, the assessment appealed against could be supported.

Held, that the appeal must be dismissed.

Semble, where the respondents succeed on the substantial questions raised by the appeal, they may be entitled to costs, although the appeal is successful on minor technical points.

Quære, in what class in Sched. III. to the Valuation (Metropolis) Act, 1869, ought a picture gallery to be entered?

THE hereditament the subject of this appeal consisted of the Grosvenor Gallery and the premises connected therewith, which occupied three houses, Nos. 135, 136, and 137, New Bond Street.

The premises were rated as one hereditament at 3,525*l.* gross and 2,937*l.* rateable value; but they were used for four different purposes, the accounts connected with each being separately kept, viz.:—(1) the Grosvenor Gallery; (2) the Grosvenor Club and Restaurant; (3) the Grosvenor Library; and (4) the Gallery Club.

The appeal calls for a report only upon the question of the principle of valuation to be adopted. The arguments and evidence relating solely to the question of amount are therefore omitted.

E. Boyle for the appellant: A reduction to 2,000*l.* gross, and 1,500*l.* rateable value is claimed. The description of the premises in the valuation list is merely "Picture Gallery, &c."; the appellant claims the addition of words such as "Restaurant, Club, and Library." [To this counsel for the respondents raised no objection.] Further, the "name or situation of property" should be stated as Nos. 135,

136, and 137, New Bond Street, and not merely as No. 135, New Bond Street, as at present. Further, the list does not state the class in Sched. III. of the Valuation (Metropolis) Act, 1869, in which the property stands. The appellant claims to be put in Class 11. The gallery has not been a successful concern, and the club and restaurant have been started merely to promote the success of the gallery. In the case of property which is occupied, as this is, for a peculiar purpose, and which is not of a kind that is often in the market, the actual business done and the profits made, are the proper means of arriving at rateable value. In *Clarke v. Alderbury Union* [1880], 6 Q. B. D. 139, which related to the refreshment room at the Salisbury Railway Station, evidence of actual receipts and expenditure was held to be admissible. Similar evidence was held to be admissible in *R. v. Verrall* [1875], 1 Q. B. D. 9, which related to the racecourse at Croydon. The cost of the buildings is not evidence. (See *Mackay v. Strand Union*, Ryde's Rat. App. (1886—1890) 163, where the Assessment Sessions rejected evidence as to the cost of Covent Garden Theatre and the Floral Hall.)

Evidence was given to show that if rateable value were to be calculated on the basis of the actual receipts and expenditure, it should be reduced to nothing, or to a merely nominal sum. One witness, however, admitted that a tenant might be found to pay 2,000*l.* a-year on lease (apparently on the assumption that he was not to be restricted to the existing mode of user).

Poland, Q.C. (*Danckwerts* with him), for the respondents: The contention of the appellants, that a picture gallery is to be rated on the profits made, involves the conclusion that a theatre is to be rated at varying sums, according to the success of the piece played. The cases cited are distinguishable on the facts. In *R. v. Verrall* [1875], 1 Q. B. D. 9, it was suggested that land used as a race-

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course might be valued as mere agricultural land, and an attempt was made to exclude from consideration the additional value arising from the user as a racecourse. Moreover, it was decided that the profits made were not the *ratio decidendi*, but "elements for the consideration of the justices in arriving at the rateable value." In *Clarke v. Alderbury Union* [1880], 6 Q. B. D. 139, the only possible object of occupation was to make a profit; and the amount of profit actually made was the only possible test of the value of the occupation. A refreshment room at a railway station is not comparable with the premises in the present case, which are nothing more than three houses in New Bond Street, with inter-communication. Clubs and galleries of this kind are in practice often let. These premises are not different from an ordinary house, and should, therefore, be put in Class 5 of Sched. III. to the Valuation (Metropolis) Act, 1869.

Evidence was given on behalf of the respondents to show that, by comparison with the rental values of similar premises in the immediate neighbourhood, the hereditaments in question might be expected to command a rent, on lease, of 3,500%. Some of the witnesses, however, stated that alterations of the premises would be necessary before they could be so let.

E. Boyle in reply: I do not claim an assessment at nothing because no profit is made; but the rateable value must be calculated with regard to the specific business carried on. The premises are to be rated as they are now, and not as they hereafter may be. The appeal must in any event succeed as to the description of the property.

The CHAIRMAN (Sir P. H. Edlin, Q. C.): The objections as to misdescription are purely technical. We do not fail to observe the use that is sought to be made of the mis-

takes of the assessment committee. The appeal is dismissed with costs (a).

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No express decision was given as to the Class in which the property ought to have been entered.



THE IMPROVED INDUSTRIAL DWELLINGS COMPANY v. THE
ASSESSMENT COMMITTEE OF ST. LUKE'S, CHELSEA.

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Feb. 14.

Artizans' Dwellings—Annual Value—Weekly Rent—Payment in addition to Rent—Practice—Costs.

The appellants were the owners of 162 tenements, consisting of artizans' dwellings erected in large blocks, each tenement being a separate rateable hereditament, and let on a weekly tenancy. Each tenant paid, in addition to his "rent," in the ordinary sense, a sum of 6d. a week towards the "general expenses of the estate," which included, *inter alia*, the cost of lighting the approaches and staircases, and of maintaining lamps, cleaning cisterns and drains; the rents of gas-meters; the wages of a porter; and the cost of sundries for cleaning, as brooms, disinfectants, &c. On hearing the appellants' objection, the assessment committee considered that the payment of the 6d. a week by each tenant constituted a part of his rent, and, estimating the annual value of each tenement on this basis, overruled the appellants' objection. The respondents relied on the same principle in their case stated in the appeal, but did not therein contend that, whether the principle were right or not, the appellants were not over-assessed.

Held, that it was open to the respondents to contend that the appellants were not over-assessed, and to give evidence of the value of the tenements apart from the actual rent paid.

Whether the payment of 6d. a week must be regarded as a part of the rent, *quære*.

The question whether the annual value of property let on a

(a) With this case compare *London and Provincial Temperance Halls Co. v. St. Saviour's Union*, Ryde's Rat. App. (1886—1890) 95, and *Royal Agricultural Hall Co. v. St. Mary's, Islington*, *Ib.* 193, in which cases the actual profits were made the basis of calculating the rateable value. It must, however, be observed that in each of those cases the object of the occupation was to make profits; whereas, in the case reported above, no evidence was given to show that the appellant's object, so far as the picture gallery was concerned, was to make a profit.

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weekly tenancy is equivalent to fifty-two times the weekly rent, considered.

The Court, in dismissing the appeal, gave the respondents the costs, although the ground of the decision was different from that acted on by the respondents in hearing the appellants' objection, and although the point decided was not raised in the respondents' case.

THE appellants were rated as owners of a large number of hereditaments known as Marlborough Buildings, Walton Street, Chelsea, which were thus described in their case:—

“3. Marlborough Buildings are erected on private land, enclosed by gates and fences in fourteen blocks, and contain 162 separate tenement dwellings for the working classes, each of which is completely isolated from the others for all purposes of separate habitation, and open upon some one of several external staircases, each of which is for the common use of the occupiers of tenements opening on the same, and those having business with them, and which staircases, the appellants contend, are so many vertical streets, essential as approaches to the said tenements, but by no means parcel of the same.

“4. The dwellings are let at weekly rents. Applications by intending tenants are made on a printed form in the following terms:—

“ ‘To the Directors of the Improved Industrial Dwellings Co., Limited.

“ ‘I desire to become a weekly tenant of a set of rooms, being No. —, on the — floor of —, at at rent of —s. —d. per week, as from the — next, and on taking possession I will in every respect comply with your conditions of occupation as printed on the other side hereof. I will also pay a sum of 6d. per week towards the general expenses of the estate, which said sum I hereby authorize you to collect and recover, in the same manner as the rent of the dwelling is collected and recoverable.’

“5. The general expenses of the estate referred to are estimated to amount to—	1891.
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“(1) For gas for lighting approaches, staircases, yards, &c. - - - - -	£ 90
“(2) Maintaining lamps and fittings, cleaning cisterns, flushing and disinfecting drains and soil pipes, &c. - - - - -	52
“(3) Meter rents, and 5 per cent. interest on cost of gas mains, fittings, &c.- - - - -	10
“(4) Porter's wages, and house, and gas, &c. -	92
“(5) Maintenance and labour on gardens and enclosures - - - - -	10
“(6) Sundries for cleaning, as drain-machines, brooms, brushes, disinfectants, &c. - -	5
	£259

“These general expenses of the estate are necessary to maintain the hereditaments in a state to command the rent, and are in addition and not applicable to the accustomed charges for the maintenance of house property other than tenements built in blocks, but would be expenses necessarily incurred in the maintenance of such property if the same was approached only by a private road not under parochial control, but maintained by the owner of the same for the benefit of his tenants, and those resorting to the same on business with them. The appellants contend that their property, which is the subject of this appeal, is undistinguishable from property thus situated, and is in fact so situated.

“6. The sum of 6*d.* per week, in the form of application mentioned, contributed by the tenants of the said dwellings, when the whole of the same (that is, the 162 dwellings contained in the fourteen blocks as aforesaid) are occupied, would amount to a sum of 21*l.* 12*s.*; and this sum is subject to a reduction when any one or more of the dwellings are unlet, or through defaulters, or other

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casualties, so that the contributions do not cover the expenses of outgoings on account of the said general expenses of the estate."

Poland, Q.C. (Beven with him), for the appellants: For the purposes of this appeal, it will be sufficient to take one of the tenements as a test case, each tenement being a separate rateable hereditament. The respondents have arrived at the gross and rateable value of each hereditament by applying to the weekly rents the scale contained in a circular issued by the London County Council to the several rating authorities in the Metropolis. The scale itself is erroneous, and moreover, the sums to which it has been applied are wrong. In par. 4 of the respondents' case it is said that, "The assessment committee, in arriving at the values of the hereditaments, took into consideration the sum of 6*d.* a week [*i.e.*, the sum mentioned in the appellants' case, *supra*], and added it to the amounts returned as rent by the appellants, and the respondents contend that this amount was properly considered by them in arriving at the true value of the premises." This payment is not really rent, since it is paid in part for expenses entirely external to the hereditament, and in part for services which otherwise each tenant would perform for himself. It includes, *inter alia*, the cost of gas on the staircases, and so far is analogous to a lighting rate. The cleansing of cisterns and disinfecting of drains would in ordinary cases be paid for by the tenant. The effect of the arrangement is that, instead of the several tenants doing the work, the landlord employs one person to do it for the tenants, and that one person is paid out of the contributions of the several tenants. The payment, not being really rent, does not become so because it is collected and recoverable in the same manner as rent. It is obvious that the scale has been applied to the aggregate sums paid by the tenant, including the 6*d.* a week;

because in the test case, where the tenement is let at 10s. a week, if the extra 6*d.* for "general expenses of the estate" be added, and the scale be applied, the result will be an annual gross value of 19*l.*, which is the sum stated in the valuation list. If the scale be applied to a weekly rent of 10s., the result will be a gross annual value of 18*l.*, which is the amount contended for by the appellants in their case. If the 6*d.* a week is not part of the rent, the scale has been applied to the wrong figures; in any event, it is erroneous in assuming that the annual value is equivalent to fifty-two times the weekly rent. In the table appended the "amount per annum," corresponding to a weekly rent of 10s. 6*d.*, is 27*l.* 6*s.*, or exactly fifty-two times the weekly rent. If from this amount the only deductions permitted are in respect of rates and taxes and water-rate, it is obvious that no allowance is made for the possibility that each tenement may remain empty for one or more weeks in the year. Even if another tenant be found at once to take the place of an outgoing tenant, there must be some delay and loss of rent while the tenement is being cleaned. It is manifest that a landlord would accept as an annual rent a less sum than the aggregate of the weekly rents. It is true that in *Smith v. The Churchwardens of Birmingham*, Ryde's Rat. App. (1886-90) 297, the recorder of Birmingham found as a fact that the annual rent of certain property let on weekly tenancies was equivalent to fifty-two times the weekly rent; but, as was pointed out by Wills, J. (*Ib.* at p. 305), that was a finding of fact about which the High Court could not express an opinion either one way or the other. Such a finding is not binding on this Court, and it is submitted that it is unreasonable. It is not open to the respondents now to abandon the ground on which they acted in rejecting the appellants' objection, and on which they rely in par. 4 of their case (as above set out); they cannot therefore be heard to say that, even though the 6*d.* a week be wrongly treated as rent, and though the scale itself be

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1891.	wrong, yet the gross and rateable values stated in the valuation lists are not too high.
IMPROVED INDUSTRIAL DWELLINGS Co. v. ST. LUKE'S, CHELSEA.	In the course of the argument, the CHAIRMAN (Sir P. H. Edlin) remarked that the Court could not look at the circular of the London County Council for any purpose.

F. Marshall for the respondents: The circular and the scale contained therein may have been referred to by the respondents, but the question for this Court is one of fact, viz., whether the several tenements are over-assessed in the valuation list. It may be admitted that the scale is of no authority. Whether the 6*d.* be included or not as part of the rent, the assessment appealed against can be supported. Taking the test case, and excluding the 6*d.* a week, the actual sums payable by the appellants in rates and taxes and water rate (calculated on the present rateable value as stated in the list), will leave, when deducted from the aggregate of the weekly rents, a sum less than the gross value stated in the list. [The details which were given by the learned counsel are not material for the purpose of this report.] The list can therefore be supported, excluding the 6*d.* a week. If it be true, as the appellants contend in par. 5 of their case (*supra*, p. 23), that the "general expenses of the estate are necessary to maintain the hereditaments in a state to command the rent," then the 6*d.* may be added to the rent and again subtracted therefrom, leaving the same result. It is submitted that the payment is rent, and nothing but rent. Again, as was pointed out in *Smith v. Churchwardens of Birmingham*, Ryde's Rat. App. (1886-90), at p. 307, a weekly payment of a few shillings a week is in one respect worth more than a payment of fifty-two times that amount at the end of the year, because the landlord does not have to wait so long for his money. Whether in each case it is so is a question of fact. The respondents are prepared to give evidence that the hereditaments in

question are in fact worth the gross and rateable values stated in the list.

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Poland, Q.C., in reply: The respondents are now departing from the questions of law raised in their case. It is not open to them to say that the appellants, who in fact let these tenements at certain rents, might charge other higher rents if they chose to do so. Such a contention is analogous to an inquiry as to the probable receipts of a gas company, if prices other than the actual prices were charged. To demand higher rents would alter the character of the tenants, and the property must be rated *rebus sic stantibus*.

Sir P. H. EDLIN: The respondents' case may have misled the appellants, but I think the Court must look at all the facts.

Evidence was then given on both sides as to the true value of the hereditaments in question. The details of the evidence are immaterial for the purposes of this report.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): It is not necessary for the respondents to rely on the proposition now said by the appellants to be erroneous. It would be a difficult question to determine whether the payment of 6*d.* a week for "the general expenses of the estate" must be regarded as part of the rent, but upon this it is not necessary for us to express an opinion. I said more than once in the course of the argument that possibly we might have to divide this payment, and to hold that part of it was a payment of rent and that part was a payment of the expenses borne in ordinary cases by the tenant. But we still have to determine the general issue whether the property has been over-assessed. Even if it be said that the respondents have avoided this issue in their case, still Mr. Poland admitted that the general question was before the Court. We are of opinion that the appellants have

1891. failed to satisfy us that there has been an over-assessment.
 IMPROVED It must, however, be distinctly understood that we do not
 INDUSTRIAL endorse the contention of the respondents that the payment
 DWELLINGS of the 6d. a week forms part of the rent. The appeal is
 Co. dismissed, with the usual result as to costs (a).
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*Practice—Powers of Quarter Sessions—Increase of Gross Value—Order
 by Consent—Costs—Review of Taxation.*

In an appeal, in which a reduction of gross and rateable value was claimed by the appellants, an order was made, by consent, that the gross value entered in the valuation list should be increased, it having been wrongly stated in consequence of an inaccurate return made by the appellants as to the rent.

Whether, in an appeal claiming a reduction of the assessment, Quarter Sessions have power to increase the gross value stated in the list, *quære*.

On motions for a review of taxation of costs, the *onus* is on those who seek to disturb the taxation.

APPEAL against an assessment of 5,400*l.* gross and 4,500*l.* rateable value in respect of premises used as stationery works.

Poland, Q.C. (*Beven* with him), for the appellants: In the appellants' case, a reduction of both the gross and rateable values is claimed: for the purposes of to-day,

(a) The appellants in this case were prepared with evidence on the general question of value. Had it been necessary to have an adjournment, in order to enable them to procure evidence on this question, which was not raised by the respondents in their case, it may perhaps be doubted whether the Court would have made the same order as to costs. It must be noted that the decision of the assessment committee was affirmed by the Quarter Sessions on grounds entirely different from those acted on at the hearing of the appellants' objection.

however, the appellants are ready to accept the gross value stated in the list. The premises should be either in Class 8 or Class 11 of Schedule 3 to the Valuation (Metropolis) Act, 1869; and a deduction of one-third should be made from the gross value.

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F. M. White, Q.C. (John Montefiore with him), for the respondents: The values stated in the list were so stated in consequence of a return made on behalf of the appellants, in which it was said that they paid "annually," without a lease, a rent of 4,000*l.*, whereas it is now admitted that the premises are held under a lease for twenty-one years, at a rent of 6,260*l.* There may be some explanation of this discrepancy, which, if unexplained, amounts to fraud. Even if it be assumed that the Court cannot alter the gross value stated in the list, the respondents are entitled to contend that the rateable value appealed against is not above the true rateable value.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): Even if the Court cannot alter the gross value on this appeal, are the appellants entitled to rely in argument on figures fixed wrongly in consequence of the inaccuracy of their own return? (*a*).

By consent, the gross value was ordered to be increased to 6,000*l.*, the rateable value remaining unaltered at 4,500*l.*: the respondents to have their costs.

Appeal dismissed.

A motion was made for a review of taxation of costs.

1891.
May 7.

John Montefiore for the respondents: The clerk of the Court has allowed on taxation two fees of 63*l.* and 43*l.* respectively, paid to two surveyors who valued the site;

(*a*) See also *Wood v. St. Saviour's Union*, *infra*, p. 51, and the cases cited in the note, p. 53.

1891. but has disallowed altogether the fee paid to a third witness, who was specially retained to value the machinery, worth 35,000*l*. The questions raised at the hearing, were
 WATERLOW AND SONS *v.* ST. LEONARD'S, SHOREDITCH. (1) whether the premises were a "manufactory," and (2) what were the expenses of repairs of the machinery. Under the circumstances the retainer of a third witness was reasonable. The surveyors took the value of the machinery from the witness whose fee is disallowed.

Beven for the appellants: Questions of amount are to be left to the discretion of the taxing officer; and in the present case he has rightly exercised it.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): In applications of this kind the *onus* is on the party seeking to disturb the taxation; and here no sufficient grounds have been shown. It is said that two witnesses were called as to the value of the site, but their evidence related also to the machinery. If so, part of the fees allowed to those two witnesses is attributable to the third witness, whose figures they took (*a*).

Motion dismissed with costs.



1891.
Feb. 19.

CANTLON *v.* HOLBORN UNION.

Volunteer Storehouse—Exemption from Rateability—Occupation of the Crown.

[It has been thought unnecessary to report this case, which related to a volunteer storehouse, drill-hall, &c., in consequence of the subsequent decision of the Queen's Bench Division in *Pearson v. Holborn Union* (reported *infra*, p. 303), with regard to similar premises.]

(*a*) This decision follows the rule acted upon by the Assessment Sessions in *Esdaile v. City of London Union*, Ryde's Rat. App. (1886-90), at p. 111.

THE GUARDIANS OF THE WESTMINSTER UNION v. THE
ASSESSMENT COMMITTEE OF THE WANDSWORTH AND
CLAPHAM UNION.

1891.
Feb. 20.

Poor Law Schools—Occupation by Public Body for Statutory Purposes—Measure of Rateable Value—Rate of Interest on Value of Land and Buildings.

The appellants, in the performance of statutory duties, had acquired land, with buildings thereon occupied as schools, at a total cost of 14,000*l*. Since the date of the erection of the buildings, the cost of building had increased; and since the date when the land was purchased for the erection of schools by the appellants' predecessors in title, the value of the land had increased. The respondents estimated the value of the land at 10,500*l*., and the structural value of the buildings at 12,390*l*. The appellants were able to borrow money under statutory powers at about 3 per cent.

The premises were assessed at 1,080*l*. gross, and 900*l*. rateable value.

Held, that the assessment must be confirmed.

Semble, in estimating the rateable value, the Court adopted some higher percentages than 3 per cent. and 4 per cent. on the values of land and buildings respectively, notwithstanding the fact that the appellants were able to borrow money at 3 per cent.

APPEAL from special sessions relating to the Industrial School, St. James's Road, Wandsworth.

The overseers had assessed the premises at 1,200*l*. gross and 1,000*l*. rateable value: the assessment committee had made a reduction to 1,080*l*. gross and 900*l*. rateable; and the special sessions had confirmed this decision. The appellants claimed a reduction to 540*l*. gross and 450*l*. rateable value.

The premises were situated in the parish of St. Mary, Battersea. In 1851 the governors and directors of the poor of the parish of St. James, Westminster (being then a parish not in union), bought twenty-one acres of land (including the land in question) at 30*l*. an acre, and erected thereon the schools at a cost of 6,300*l*. In 1868, the parish of St. James having become part of the Westminster Union, the land and buildings were let by the

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governors of the poor of the parish to the Union, at a rent fixed by the Local Government Board at 500%. In 1871, fourteen of the twenty-one acres of land were sold for building purposes at the price of 1,000% an acre, and the other seven acres of land, with the school buildings thereon, were sold to the guardians of the Westminster Union (the present appellants) for the sum of 10,500%. In 1872, the appellants expended a further sum of 3,500% in additional buildings, and it was admitted by the witnesses for the appellants that since 1851 the cost of building had increased 25 per cent. It was also admitted that the land, if it were cleared, would be worth, at the date of the appeal, 900% or 1,000% an acre as building land; and another witness proved that small plots of land in the neighbourhood had been sold at a higher rate.

The schools were maintained by the appellants in performance of their duties under the poor law, and in their existing condition would be of no value for other purposes. About five acres of the land were uncovered, and used as gardens or playground.

F. Stroud for the appellants: The land and buildings together have cost the appellants 14,000%. Inasmuch as they can borrow money at about 3 per cent., the Court should take 3 per cent. on the actual cost of land and buildings as representing the rateable value.

G. E. Lyon (*Earle* with him) for the respondents: The assessment appealed against can be supported on the appellants' own evidence. If 25 per cent. be added to the original cost of the buildings, viz., 6,300%, and to this sum be added the cost of the additional buildings, viz., 3,500%, a total cost of 11,370% for buildings alone is arrived at. Taking 5 per cent. on this sum, together with 4 per cent. on the present value of the land (seven acres at 1,000% an acre), a rateable value of 848% is shown, as compared with 900% in the valuation list. Taking the higher

evidence as to the value of the lands, the assessment appealed against is more than supported.

Evidence was given on behalf of the respondents that the value of the land was 1,500*l.* or 1,600*l.* an acre (*i.e.* for seven acres 10,500*l.* and 11,200*l.* respectively); and the structural value of the buildings was estimated by different witnesses at from 12,568*l.* to 12,995*l.*

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The CHAIRMAN (Sir P. H. Edlin, Q.C.): Various tests of rateable value have been suggested, but we have to decide the practical question whether these schools have been over-assessed. In our opinion the appellants have failed to show that they have been; and we come to this conclusion without thereby implying that we adopt any particular criterion of rateable value (*a*). This appeal is dismissed with costs.

Appeal dismissed.

(*a*) Although the Court expressly avoided laying down any principle, it may be inferred that they did not adopt the same criterion as in *London County Council v. Woolwich Union*, *infra*, p. 126. There the Court took 3 per cent. on the value of the land, together with 4 per cent. on the value of the buildings, as the rateable value. It will be found that in the present case, these percentages, when applied to the lowest values given in evidence on behalf of the respondents, give a rateable value of 817*l.* as against the assessment of 900*l.* which was confirmed by the Court. It follows, *à fortiori*, that the percentages, if applied to the appellants' evidence, would not support that assessment. The value of both land and buildings being in dispute, it seems impossible to say more than that the Court adopted some higher percentage than 3 per cent. and 4 per cent. on the values of land and buildings respectively, in estimating the rateable value.

It may be noticed that the above decision leaves the question still open, whether, in estimating the rateable value of land covered with buildings suited only for the purposes of the actual occupier, the present value of the land for any purposes, or the actual cost to the existing occupier, is the better evidence of rateable value.



1891.
Feb. 27.

LAFONE v. ST. OLAVE'S UNION.

Wharf—Valuation (Metropolis) Act, 1869, Schedule III.—Case for Opinion of Queen's Bench Division—Practice.

A wharf on the banks of the Thames is to be put in Class 5 in Schedule III. to the Valuation (Metropolis) Act, 1869.

Voss v. St. Olave's Union [1881], Ryde's Met. Rat. App. 253, followed.

The Sessions refused a case upon the question whether a wharf is to be put in Class 5, or not, on the ground that it was a question of fact.

Semble, where one of the parties to an appeal at Quarter Sessions intends to ask for a case upon a question of law, he should, by his evidence, enable the Court to state alternative findings, and should give the other party to the appeal an opportunity of contesting the facts which are to be relied on in stating the case.

The gross value of a hereditament must be ascertained on the assumption that the landlord bears the cost of repairs; and therefore, in such calculation, it is immaterial whether the actual cost of repairs is greater or less than the maximum reduction from the gross value permitted, in the case of the particular hereditament, under the Valuation (Metropolis) Act, 1869, Schedule III.

APPEAL relating to Butler's Wharf, Shad Thames, in the Parish of St. John, Horselydown. The assessment was fixed by the overseers at 10,680*l.* gross and 8,900*l.* rateable value, but reduced by the assessment committee to 9,707*l.* gross and 8,090*l.* rateable.

(An appeal relating to the same hereditament, heard by the assessment sessions, in 1881, is reported Met. Rat. App. 278, where the history of the wharf and the previous ratings are stated.)

Philbrick, Q.C. (*Alex. Glen* with him) for the appellant: Butler's Wharf being situated on the banks of the Thames, is not like an ordinary warehouse. The overseers and the assessment committee put the wharf in Class 5 of Schedule 3 to the Valuation (Metropolis) Act, 1869, as being within the description "buildings without land

which are not liable to inhabited house duty and are of a gross value of 40% or upwards." The premises should be put into Class 11, which includes "rateable hereditaments not included in any of the foregoing classes." The overseers and the assessment committee allowed a deduction of one-sixth from the gross value, being the maximum deduction under Class 5. The appellant is prepared to show that the actual cost of repairs, &c. is greater than the deduction allowed.

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Poland, Q.C. (*Horace Ivory* with him) for the respondents, objected: The question as to the class in which this hereditament should be placed is governed by *Voss v. St. Olave's Union* [1881], Met. Rating App. 253, where the assessment sessions held that Fenning's Wharf (which is exactly similar to the wharf the subject of the present appeal), was rightly placed in Class 5. That decision was right, and has moreover been acted upon in rating wharves ever since 1881: to overrule it now in favour of the appellant would be unfair to other wharfingers. [Sir P. H. EDLIN: May it not be argued, even if we put the property in Class 5, that the hypothetical tenant would (by reason of his having so small a deduction from the gross value) be prepared to give a smaller rent in consequence?] No: because the gross value must be arrived at first. By s. 4 of the Valuation (Metropolis) Act, 1869, the term "gross value means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rentcharge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command the rent." This definition assumes that the landlord bears the cost of repairs, &c., and the gross value cannot therefore be affected by the question whether the deductions

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therefrom permitted by Schedule 3 are greater or less than the actual cost of repairs.

The Court decided to follow the decision in *Voss v. St. Olave's Union* [1881], Met. Rat. App. 253, as to the class.

The appeal was then heard at considerable length, and on the question of value was dismissed.

In the course of the hearing it was suggested (but not seriously pressed) that, upon the facts, Butler's Wharf partook more of the nature of a manufactory than did the wharf to which *Voss' Case* related. It appeared, however, that the machinery at Butler's Wharf comprised little beyond the engines for generating the electric light, the hydraulic lifts and cranes; some machinery connected with repacking tea in chests, and some hydraulic machinery for cutting tin plates.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We are of opinion that this appeal fails. The appellant might have stood in a better position if, in order to arrive at the rateable value, the statute enabled us to deduct the actual costs for the maintenance and repair from the gross value. But it does not; we have to ascertain the gross value upon the assumption that those costs fall upon the landlord, and the allowance or deduction in respect thereof must not exceed the maximum prescribed by the third Schedule to the Valuation (Metropolis) Act, 1869, that is to say, the maximum prescribed for the class under which the property falls. Thus, the allowance—in this case one-sixth only—falls short of the actual expenditure. As to the class, we adhere to the opinion expressed in *Voss v. St. Olave's Union* [1891], Met. Rat. App. 253.

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June 20.

Philbrick, Q.C., for the appellants, asked for a case for the opinion of the Queen's Bench Division upon the

question whether the wharf should be put in Class 5 or Class 11. He admitted that he had not asked for alternative findings, but submitted that the cost of the repairs had not been disputed.

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Poland, Q.C., for the respondents: The Court having ruled that the hereditament must be entered in Class 5, in which class a deduction of one-sixth only could be allowed, the respondents were not interested in contesting the exact cost of the repairs. To grant a case now would involve a re-opening of the entire appeal. Moreover, the appellant has attended the taxation of costs without protest. The question as to the proper class is a question of fact rather than of law, and therefore the High Court would not entertain the case.

Philbrick, Q.C., in reply: The construction to be put upon the schedule to an Act of Parliament must be a question of law. If necessary, to avoid the difficulty as to the absence of alternative findings of value, the appellant is content to ask for a case raising the mere question of law, whether a wharf is to be entered in Class 5.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We are all of opinion that a case ought not to be granted. The question raised is almost a question of fact, and we have great doubt whether the High Court would have the power or the inclination to deal with it. Moreover, in the absence of alternative findings, the High Court would not entertain a case which did not enable them to deliver a final judgment.

Appeal dismissed; case refused.



1891.
Feb. 26.

THE LONDON COUNTY COUNCIL *v.* ST. GILES' IN THE
FIELDS AND ST. GEORGE'S, BLOOMSBURY.

Practice—Appeal against Totals—Inspection of Returns made by Ratepayers—Valuation (Metropolis) Act, 1869, ss. 31, 55, 56, 69.

By sect. 69 of the Valuation (Metropolis) Act, 1869, "Any ratepayer . . . in the metropolis may, at all reasonable times, without payment, inspect and take copies of and extracts from all valuation lists and documents which, in pursuance of this Act, are under the control of the clerk of the managers of the metropolitan asylum district, or of the clerk of the assessment sessions."

Held, that the Court could not under this section order inspection of documents under the control of the clerk of an assessment committee, as though the word "sessions" had been inserted in the statute by mistake for the word "committee."

By sect. 31, the sessions "may order any . . . clerk of assessment committee . . . to produce any documents relating to rates or taxes" which the sessions may "consider necessary for determining an appeal."

Held, that this section applied only to production at the hearing, and not to inspection before the hearing, of an appeal.

Whether the returns made by ratepayers under sect. 55 are "documents relating to rates" within the meaning of sect. 31, *quære*.

Semble, where one party to an appeal refuses to allow inspection of documents in his possession, and on the hearing of the appeal an adjournment is rendered necessary by such refusal, the Court may order such party to pay the costs of the adjournment, although the right of inspection be not given under the express words of the statute.

MOTION on behalf of the appellants, in an appeal against totals, for leave to inspect the returns made by the ratepayers in the respondents' parishes under sect. 55 of the Valuation (Metropolis) Act, 1869.

Horace Avory for the appellants: By sect. 56 of the Valuation (Metropolis) Act, 1869, "the return [made under sect. 55 as to the rent, &c. paid by the occupier] shall be delivered to the overseers of each parish, and

together with the valuation list shall be sent by them to the surveyor of taxes, and by the surveyor of taxes to the assessment committee." Inspection of the returns is claimed by the appellants as ratepayers under sect. 69, which enacts that "Any ratepayer, overseer, clerk of an assessment committee, or surveyor of taxes in the metropolis, may, at all reasonable times, without payment, inspect and take copies of and extracts from all valuation lists and documents which, in pursuance of this Act, are under the control of the clerk of the managers of the metropolitan asylum district, or of the clerk of the assessment sessions." It is submitted the last words quoted should be "assessment committee," as is pointed out in a note in Beal's "Practice at Assessment Sessions," at p. 177. There are no documents in the hands of the clerk of the assessment sessions (now the London Quarter Sessions: 51 & 52 Vict. c. 41, s. 42 (10)) which a ratepayer could possibly wish to see; the Court must, therefore, make the slight alteration suggested, in order to give some meaning to the words. In any event, the Court can order inspection under sect. 31, which provides that "the justices in assessment sessions [now the London Quarter Sessions] may order any . . . clerk of assessment committee . . . to produce any documents relating to rates or taxes which such justices may consider necessary for determining an appeal." The returns "relate to rates" within the meaning of this section, because they are the materials on which rates are made. [Sir P. H. EDLIN: Are not the returns rather the materials for making out the lists, on which rates are afterwards made?] If the returns do not "relate to rates," then the clerk of an assessment committee has in his possession no documents which relate to rates.

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Buckmaster for the respondents: There is no mistake in the words of sect. 69, and even if there be, this Court cannot substitute one word for another, unless the language used is utterly meaningless. It is sufficient to show that

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there are *some* documents under the control of the Clerk of the Sessions, of which inspection might be desired. The Clerk has under his control the rules made by the Court, the recognizances entered into by appellants, the petitions, and the cases stated on appeal; and a ratepayer might very well wish to inspect all or some of these. Consequently, the Court cannot alter the express words of the statute. Moreover, by the second clause of sect. 69, it is provided that "Any surveyor of taxes and any guardian, and any overseer in a union, without payment, and any ratepayer in a union on payment of a fee not exceeding one shilling, may at any reasonable time inspect and take copies of and extracts from any valuation lists, notices of objection, *returns*, and other documents in the possession or under the control of the assessment committee of that union." The returns, of which inspection is now sought, are mentioned by name in this second clause, and it is submitted the first clause does not apply to them. For if it does, then the first clause gives to *any ratepayer in the Metropolis, without payment*, inspection of the same documents of which inspection is given by the second clause to *a ratepayer in the particular union on payment of a fee of one shilling*. The appellants cannot rely on the second clause of sect. 69, because they are not ratepayers in the respondents' parishes.

[Sir P. H. EDLIN : Section 31 applies only to production at the hearing, and not to inspection before the hearing, of an appeal.]

Horace Ivory in reply: If it be held that sect. 31 applies only to production at the hearing, the effect will be that the examinations of the returns must be deferred till the hearing, when an adjournment will be necessary after the appeal is called on.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): It seems not unreasonable that the appellants should see the returns.

If it be suggested that the inspection may subject the respondents to unnecessary expense, that can be considered in dealing with the costs. No obstacles should be thrown in the way of the appellants. The Court makes no order upon this motion, and all questions of costs are reserved. If, at the hearing, an adjournment be necessary to enable the appellants to inspect these returns, the Court can deal with the costs of that adjournment (a).

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Motion dismissed.

THE SOUTH EASTERN RAILWAY COMPANY v. THE ASSESSMENT COMMITTEE OF THE CITY OF LONDON UNION.

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Practice—Times for Proceedings—Alteration of Valuation List after Re-deposit—Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 20, 21—Valuation (Metropolis) Act, 1869, s. 42.

The assessment committee revised a valuation list and ordered it to be re-deposited, without making any alteration in the appellants' assessment as fixed by the overseers. Subsequently to such re-deposit, and after the expiry of the statutory time prescribed for the final approval of the list, the assessment committee increased the appellants' assessment, without objection thereto being made by any person.

Held, that the delay in making the alteration did not render it a nullity, as the provisions as to time contained in sect. 42 of the Valuation (Metropolis) Act, 1869, were directory and not imperative.

R. v. Ingall [1876], 2 Q. B. D. 199; *Met. Rat. App.* 176, followed.

Held, further, that the assessment committee had power, under sect. 21 of the Union Assessment Committee Act, 1862, to make an alteration in an assessment after the re-deposit of the list, even though no objection were made to such assessment.

APPEAL relating to so much of the Cannon Street Station as is within the parish of Allhallows the Great, in the City of London Union.

(a) The further proceedings in connection with this appeal are reported *infra*, p. 72.

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The appeal came first before the Court upon a preliminary question raised by the appellants as to the validity of the list, arising out of the following facts:—

In 1890 the overseers duly deposited a list in which the appellants were assessed at 9,600*l.* gross and 8,000*l.* rateable value. The list was transmitted to the assessment committee, and, after revision, was re-deposited by them on July 25th, without any increase of the appellants' assessment. The assessment committee sat for the hearing of objections to the alterations made in the list, and on August 20th, 1890, again re-deposited the list, without any increase being made in the appellants' assessment.

On the list being produced in Court, it appeared that in the columns headed respectively "Gross Value as finally determined by Assessment Committee" and "Rateable Value as finally determined by Assessment Committee," the figures stating the gross and rateable values as fixed by the overseers were repeated; and it was stated that this entry was made after the first and before the second re-deposit; and it was suggested that the entry was a mere clerical error on the part of the clerk to the assessment committee, inasmuch as the committee had resolved to appoint a paid valuer to revise the assessments of the appellants and other large companies. On September 10th notice of the intention to appoint a valuer was sent to each of the guardians of the union, pursuant to sect. 16 of the Union Assessment Committee Act, 1862; and on September 30th Mr. W. Barnett, having been appointed, wrote to the appellants for certain information, part of which was given; permission to view the premises was also asked and given. On October 24th Mr. Barnett wrote for further information; and on November 1st the appellants replied that the information asked for was not known, and that, if known, it would be of no assistance. On November 5th the assessment committee passed a resolution to increase the appellants' assessment to 21,000*l.* gross and 17,500*l.* rateable value, the alteration being carried out by

drawing a line through the figures already standing in the columns above specially mentioned, and by writing the increased figures above them respectively. On November 14th the committee wrote to the appellants asking them to waive the statutory notices, and to accept a short notice of the meeting for hearing of objections to the alterations. On December 3rd the appellants wrote refusing to accept such notice. On December 17th the assessment committee ordered the list to be again re-deposited, and on December 20th it was sent back to the overseers for that purpose. On December 30th the appellants gave notice of objection to the alteration; and on December 31st the assessment committee gave notice of intention to revise the list, and to sit for the hearing of the appellants' objection on January 8th, 1891, on which day the appellants appeared to make objection under protest, and they were on that day told what the decision of the assessment committee would be. On January 19th the committee finally approved the list, leaving the appellants' assessment at 21,000*l.* gross and 17,500*l.* rateable value, as fixed by Mr. Barnett. The notice of appeal to Quarter Sessions was dated January 14th, 1891.

The Union Assessment Committee Act, 1862, by sects. 20 and 21, enacts as follows:—

“20. The committee may, whether any objection be or be not made to any such valuation list, and either before or after any meeting for hearing objections, make such alterations in the valuation of any hereditaments included in any valuation list, and insert therein any rateable hereditament omitted therefrom, and make such corrections in names, descriptions, and particulars in any valuation list, and upon such information, as to them may seem sufficient, and may, with the consent of the guardians as aforesaid, appoint or employ a person to survey and value the rateable hereditaments comprised in any such valuation list, or any of them, or omitted therefrom, or may take such other means as they may think necessary for

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ascertaining the correctness thereof, and when the committee have heard and determined all such objections as aforesaid, and have made such alterations, insertions, and corrections in any valuation list as to them may seem proper, they shall approve the same under the hands of three members of the committee present at the meeting at which the same is approved, with the date of such approval.

“21. Where the committee make any alteration in the valuation of any hereditaments included in, or insert therein any rateable hereditament omitted from, any such valuation list, they shall cause such valuation list, with such alteration or insertion, to be deposited for inspection in manner hereinbefore provided concerning the valuation list made by or delivered to the overseers, and shall cause the like notice to be given of such deposit as is required in the case of a valuation list so made or delivered as aforesaid, and shall appoint a day, not less than seven days nor more than fourteen days from the re-deposit of such valuation list, for the hearing of any objections to the valuation list as so altered; and when the committee have heard and determined any such objections, or have made such further alterations, insertions and corrections in such valuation list, they shall approve the same in manner hereinbefore provided.”

The Valuation (Metropolis) Act, 1869, s. 7, provides that “after the valuation list is signed by the overseers, the same proceedings shall be had as are directed by sects. 17, 18, 19, 20, and 21, of the Union Assessment Committee Act, 1862, subject to the alterations made by this Act.” The following are the material sub-sections of sect. 42 of the Act of 1869, prescribing “times for proceedings” :—

“(4.) The assessment committee shall revise the valuation list before the first of October in the same year, and before the same day, but not less than sixteen days after the transmission of the list to them by the overseers, shall hold a meeting for hearing objections to such list.

“(5.) The assessment committee shall give notice of a meeting for hearing objections to a list not less than sixteen days before such meeting.

“(7.) The assessment committee shall send the valuation list to be re-deposited within three days after it is approved by them, and shall appoint a day, not less than fourteen nor more than twenty-eight days after such re-deposit, for hearing objections to the alterations, of which objections seven days’ notice shall be given by the objector.

“(8.) The assessment committee shall finally approve and send the valuation list to the overseers, and the clerk of the managers of the Metropolitan Asylum District, before the first of November in the same year.

“(9.) Notices of appeal to Special Sessions shall be given on or before the twenty-first of November in the same year.

“(10.) The justices may hold the special sessions at any time after the thirtieth of November in the same year, which will enable them to determine all appeals before the ensuing first of January.”

Sir *Edward Clarke*, S.G., and *E. Page*, for the appellants (*a*): The alterations in the list are invalid on two grounds; (1) because the times prescribed by sect. 42 of the Valuation (Metropolis) Act, 1869, have been disregarded (*b*); and (2) because, after approving and re-depositing the list, the assessment committee have no power to make alterations, except in deciding on objections to alterations already made. As to the second point, the assessment committee, after re-depositing the list, were *functi officio*, and had no power to make any alteration as

(*a*) Two counsel on each side were heard “by special leave of the Court,” the usual practice at London Quarter Sessions being to hear “one counsel only for each party,” see O. 13 (1890).

(*b*) The arguments upon this point are omitted, the question being fully discussed before the Court of Appeal and the Queen’s Bench, in *R. v. Justices of London*, *infra*, p. 360.

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to the appellants' assessment. The respondents in their own case allege that the list was re-deposited without an alteration of the appellants' assessment, and that the valuer was not appointed until after the re-deposit. [Sir P. H. EDLIN: The list as it stands shows figures which have been erased and figures which it is said are wrongly entered. If we hold that there is no valid list for this parish, could we not make an order under sect. 35 of the Valuation (Metropolis) Act, 1869, which provides that "if it appears to the sessions on any appeal that there is no approved valuation list for some parish, they may appoint some proper person to make a valuation list?"] In the present case there is a valid list, for the erasure of the old figures, and the substitution of the new, are one act. If the new figures are a nullity, the erasure is a nullity, and the old figures stand. By sect. 21 of the Union Assessment Committee Act, 1862 (*supra*, p. 44), power is given to object, after re-deposit, to alterations already made, and the committee must deal with such objections, but there is no power to make alterations as to assessments not objected to. Moreover, the provisions as to time, contained in sect. 42 of the Valuation (Metropolis) Act, 1869, contemplate one re-deposit only, and the logical result of the respondents' contention must be that there is power to repeat alterations and re-deposits as often as the committee think fit.

Poland, Q.C., and *R. Cunningham Glen*, for the respondents: The appeal must be tried on the merits. It is admitted that the statutory times have been exceeded, but the valuation list is in the statutory form, and (apart from the question of time) purports to be a valid list. The assessment committee have express power under sect. 21 of the Union Assessment Committee Act, 1862, *supra*, p. 44, to make "*further alterations*" after re-depositing the list; and we do not shrink from saying that they may make alterations again and again, provided that after every

alteration they re-deposit the list, and give notice to every ratepayer whose assessment is increased. In *R. v. Chorlton Union* [1872], L. R. 8 Q. B. 5, it was held that alteration, *without re-deposit and notice to the ratepayer*, was bad. Here the appellants had notice of the alteration, and their objection thereto has been heard: they have therefore not lost their right to appeal under s. 32 of the Valuation (Metropolis) Act, 1869. After revising the list as to other properties, the assessment committee adjourned the consideration of the appellants' assessment. The copying of the overseers' figures was a clerical error on the part of the clerk to the assessment committee, and was no act of the committee. There was no signature of the list by the committee until January 19, when the list was finally approved.

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Sir *Edward Clarke* in reply: The Committee, by s. 20 of the Union Assessment Committee Act, 1862, are directed to "approve the list under the hands of three members," after hearing the first set of objections. If, therefore, they did not sign the list until January 19, that is a breach of duty on their part, of which they cannot now take advantage. The words "further alterations" in s. 21 of the same Act (*supra*, p. 44), must be read as meaning alterations incidental to, or consequent on, the decision on objections made after re-deposit. It is an unnatural interpretation of this section to say that it gives the committee power to make alterations over and over again.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We should be sorry to say anything which might lead persons charged with executive duties under the Valuation (Metropolis) Act to regard the respective times prescribed for certain proceedings as not requiring a strict observance. In this case there has not been such observance, and the questions that have been argued before us to-day are the natural consequence. It appears that the hereditaments to be assessed are so peculiarly situated, and of such a nature,

1891. S. E. RY. v. CITY OF LONDON UNION. Sir P. H. Edlin, Q.C.	that the committee engaged a valuer specially for the purpose of valuing them, and it was found impossible to complete the estimate within the time prescribed by sect. 42 for the revision of the list. Now, the appellants were cognizant of this; indeed, both before and after the day prescribed for "final" approval, at the request of the committee, they furnished information to assist the valuer. It further appears that before arriving at a definite conclusion as to the values—that is to say, before making any alteration in the overseers' list, which had been re-deposited—the committee invited the attendance of the appellants' agents, with a view to a full and, we may presume, a fair consideration of the matter. The appellants did not avail themselves of this opportunity, and the committee having determined upon their assessment, appointed the 8th day of January for hearing any objection thereto. Then the appellants attended before them, and having protested against the proceedings of the committee subsequent to the re-deposit as illegal and <i>ultra vires</i>, were heard in support of their objections to the substituted amounts; and they have now contended that the altered figures and the <i>erasure</i> of the original amounts entered should be treated as a nullity, and that the latter amounts should stand unaltered in the valuation list. We think it was a mistake on the part of the committee to allow the original valuation figures to remain in the list when re-deposited, and that it had been better to make a special entry with regard to this particular property to the effect that its assessment was still under consideration by the committee; but we are bound by the decision of the Queen's Bench in <i>R. v. Ingall</i> [1876], 2 Q. B. D. 199; Met. Rat. App. 176, that the times at which the several acts should be done are directory and not imperative. Indeed, in no essential respect can the present case be distinguished from that one. Here there is the anomaly of the valuation list being finally approved five days after the last day for giving notice of appeal to this Court, s. 42 (12); but in <i>R. v. Ingall</i> the list was not
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finally approved until seven days after that day, and here the appellants, having had notice on the 8th of January of the amounts at which they stood assessed, gave due notice of the present appeal. We are of opinion, therefore, that we cannot regard the alteration in the assessment as a nullity, but must deal with this appeal on its actual merits (a).

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Sir P. H.
Edlin, Q.C.

Objection to valuation list overruled.

THE IMPROVED INDUSTRIAL DWELLINGS CO. v. THE
HOLBORN UNION.

1891.

March 4.

Artizans' Dwellings—Deduction from Total of Weekly Rents—Inequality of Assessment—Notice of Appeal to Persons alleged to be under-assessed.

The appellants, who were rated as the owners of a large number of artizans' dwellings, let to weekly tenants, appealed on the ground that in assessing the owners of other property, in the same parish, let to weekly tenants, a larger deduction from the total of the weekly rents had been allowed than was made in assessing the appellants. At the hearing of the appeal, the appellants were unable to show that they were themselves over-assessed; they had given no notice of the appeal to the persons alleged to be under-assessed, nor did they contend that the assessment of such persons should be altered.

Held, that the appeal must be dismissed.

APPEAL by the owners of tenement buildings, or artizans' dwellings, known as Cobden Buildings, King's Cross Road, and Compton Buildings, Goswell Road, forming in all 341 separate and distinct houses structurally severed, but built in twenty-eight blocks.

(a) The hearing of the appeal upon the merits was begun on August 1st, 1892, when a compromise was agreed upon. It will be noticed that this date was more than a year after the expiry of the statutory time prescribed by the Valuation (Metropolis) Act, 1869, s. 42 (13); see *R. v. Justices of London*, *infra*, p. 360.

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The appellants in paragraph 4 of their case stated that “at a meeting of the Holborn Union Assessment Committee on or about January 1st, 1890, and previously to the preparation of the valuation list, for the purpose ‘of securing one uniform basis of rating property throughout this Union,’ it was (*inter alia*) resolved ‘that 40 per cent. be deducted from the total of rents received instead of 33 per cent. as allowed by the present scale’ (a) in arriving at the gross estimated rental of premises let at weekly rents between 3s. and 15s. (with the exception of artisans’ and model dwellings, which are to be excluded from the operation of this resolution).”

The appellants further alleged that the effect of the said resolution was that a deduction of not more than 24 per cent. was made from the total of the weekly payments made by the tenants of the appellants’ property, whereas the owners of property included within the operation of the resolution were allowed a deduction of 40 per cent. The appellants in their case contended —

(1) That the exclusion of the appellants’ property from the benefit of the said resolution is illegal.

(2) That they are entitled to be included in the terms of the said resolution and to have their assessment altered accordingly.

(3) That the difference between the assessment of the appellants’ property and that of the other weekly properties is excessive, and that the assessment of the appellants should be reduced.

Poland, Q.C. (*Seven* with him), for the appellants: Apart from the question of inequality, I am not in a position to show, on the facts, that the appellants’ property is over-assessed: but a great injustice will be done them if they are assessed at the true value, and all other owners of

(a) The scale here referred to seems to mean either a special scale adopted by the respondents in their own practice, or the scale adopted by the conference of Metropolitan rating authorities.

similar property at less than the true value. The large number of such owners has made it impossible for the appellants to give them notice of this appeal, and it is not sought to alter the assessments of such owners. Before the passing of the Valuation (Metropolis) Act, 1869, when an appeal, on the ground of such inequality as exists in the present case, could have been brought against a particular rate, and not against the valuation list, the Court would have quashed the rate. It must be admitted, however, that the Court have no power under the Valuation (Metropolis) Act, 1869, to quash the valuation list.

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UNION.

Besley appeared for the respondents but was not called upon.

Appeal dismissed.

WOOD v. ST. SAVIOUR'S UNION.

1891.

March 4.

Manufactory—Deduction from Gross Value—Valuation (Metropolis) Act, 1869, Sched. III.—Practice—Power of Quarter Sessions to raise Gross Value—Costs.

Premises used partly as a manufactory, and partly as a warehouse, should be entered in Class 11 of Sched. III. to the Valuation (Metropolis) Act, 1869.

Semble, in an appeal claiming a reduction of the assessment, the Quarter Sessions have no power to raise the gross value stated in the list.

Where an appellant succeeded in obtaining an alteration of the class in which his property was entered, but failed to obtain a reduction of the assessment, the Quarter Sessions allowed the appeal without costs.

APPEAL against an assessment of 1,800*l.* gross, and 1,500*l.* rateable value, in respect of property described in the valuation list as “offices, warehouses, &c.” The appellants in their case claimed a reduction of both the gross and the rateable value; at the hearing of the appeal, they

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accepted the gross value as stated in the list, but claimed a larger deduction therefrom to arrive at the rateable value.

Alex. Glen for the appellants: The property has been put in Class 5 of Sched. III. to the Valuation (Metropolis) Act, 1869; "Buildings without land which are not liable to inhabited house duty, and are of a gross value of 40% and upwards." It is contended that it should be put in Class 8 ("mills and manufactories"), and that the full deduction of one-third, permitted in that class, should be made from the gross value. The appellants are wholesale manufacturing grocers, and the principal article manufactured on the premises is jam. It is admitted that the manufacture of jam on a small scale will not convert a dwelling-house into a manufactory: the question is one of degree. There is no statutory definition of the term "manufactory;" a definition of a "factory" is given in s. 93 of the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), which would include the premises now in question. It may be said that part of the premises is used merely for warehousing goods; but in every manufactory there must be space to store the goods manufactured until they can be sold.

The following facts were proved by the appellants' witnesses:—The main building consisted of five floors and a basement, and two additional floors of one room each in a tower. There was an engine and boiler-house separated by a yard from the main building, but within the same curtilage. The power was conveyed into the basement and thence by means of vertical shafting to the top floor of the main building. There were in the top floor of the tower two coffee roasters worked by bands; and there were in the basement and in two other floors of the main building, machinery, pans, coppers, and appliances for the preparing of fruit and manufacture of jam; for the grinding of coffee and pepper, and the cutting of sugar. Although the greater part of the fruit for the manufacture

of jam came in July and August, yet as great part was half-boiled and stored for some months, the final processes of manufacture were going on all the year round. The premises were also used for the storage, bulking, and re-packing of tea, and for the re-packing of confectionery imported from the continent. About 100 persons (three-fourths of that number being women) were employed on the premises. There were lifts and cranes worked by steam throughout the premises. The appellants conducted the clerical departments of their business there.

It appeared that the land had cost 12,000*l.*, the buildings about 22,000*l.*, and the machinery (including the cranes, lifts, and the pans, &c., used for boiling fruit) 4,000*l.*

G. E. Lyon (*G. Elliott* with him) for the respondents: The appeal raises two distinct questions; (1) whether the premises ought to be entered in Class 8 or Class 5, and (2) whether, if they are put in Class 8, the full deduction of one-third should be made from the gross. A building does not become a "manufactory" by reason of the addition of a few pieces of machinery; nor need the full deduction be made in the case of every manufactory. In making out the valuation list, great part of the machinery (which is now said to make the premises a "manufactory") was not taken into account. The appellants claim a large deduction because of the cost of repairing the machinery; had that machinery been taken into account, the gross value would have been higher. [Sir P. H. EDLIN: I do not think we have power to raise the gross value (*a*).] The premises are, as to the greater part, used as a warehouse; and cranes and lifts would be found in any warehouse of such a size. The respondents have taken the thirty horse-power engine, with the shafting and all that would be included under "motive power," at 3*l.* per

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(*a*) See also *Waterlow v. St. Leonard's, Shoreditch*, *supra*, p. 28; *Middle Class Dwellings Co. v. St. George's Union*; *Chappell v. St. George's Union*; and *Silverlock v. St. Saviour's Union*, *infra*, pp. 61, 65, 67.

1891. horse-power as enhancing the value of the premises. On
 the facts proved, sufficient deduction from the gross has
 been made.

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 UNION.

No evidence was given on behalf of the respondents.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We think that the premises as a whole are not strictly within the term "manufactory," nor are they strictly a warehouse. They are of a composite character, and should be put in Class 11 of Schedule III. to the Valuation (Metropolis) Act, 1869, which contains "hereditaments not included in any" (which means in any one) "of the foregoing classes." It would be against the appellants' own evidence to put these premises in Class 8. The valuation list is to be altered as to the class, but the assessment will stand. The appellants were entitled to come here upon the question as to the class, but they have abandoned certain issues. There will be no order as to costs (a).

Appeal allowed.

1891.
 March 6.

FREDERICK BRABY & COMPANY, LIMITED v. GREENWICH
 UNION.

*Manufactory—Valuation (Metropolis) Act, 1869, Sched. III.—
 Practice—Costs.*

The appellants were iron barge builders and workers in galvanized iron and zinc; the premises in which they carried on their business had a wharf frontage of 380 feet, and about half of the area was occupied by iron buildings containing machinery, the open space being used for building iron barges.

(a) For an instance of premises held by the Assessment Sessions to constitute a "manufactory," see *Saunders & Shepherd v. Holborn Union*, Ryde's Met. Rat. App. 245; and compare *Voss v. St. Olave's Union*, *ib.* p. 253; *Lafone v. St. Olave's Union*, *supra*, p. 34. See, also, *Middle Class Dwellings Co. v. St. George's Union*, *infra*, p. 61; *Chappell v. St. George's Union*, *infra*, p. 65; and *Silverlock v. St. Saviour's*, *infra*, p. 67.

Held, that the premises were a "manufactory," and must be put in Class 8 of Sched. III. to the Valuation (Metropolis) Act, 1869.

Where the appellants obtained a much smaller reduction of their assessment than they had claimed, the Sessions gave them two-thirds of their costs.

1891.

BRABY & Co.

v.

GREENWICH
UNION.

APPEAL against an assessment of 600% gross and 450% rateable value, in respect of premises described in the valuation list as "Wharf, buildings, &c., No. 157, Grove Road." The appellants contended that the premises were a "manufactory," and should therefore be entered in Class 8 of Sched. III. to the Valuation (Metropolis) Act, 1869 ("mills and manufactories"), with a deduction of one-third from the gross value, and that the assessment should be reduced to 505% gross and 337% rateable.

The appellants were iron barge builders and galvanized iron and zinc workers, and occupied the premises (which had a frontage of 380 feet to the Grand Surrey Canal, and were known as the Victoria Wharf) for the purposes of their business. The area of land was one acre and three-quarters, of which about one-third or one-half was uncovered. The open space was used for the manufacture of iron barges, and the buildings, nearly all of which were of galvanized iron, contained machinery which was thus described in the appellants' case:—thirty horse-power engine and boiler, and shafting; a roller bending machine, an angle iron bending machine, and two other bending machines; two punching and shearing machines; a multiple punching press; two other punching presses; an Italianizing machine; a riveting machine; two saw benches; two drilling machines; a planing machine; a lever press; two hand cranes, steam pump, and certain other small machines.

The appellants did not carry on the business of wharfingers, and the only goods stored on the premises were those manufactured by the appellants.

[The arguments and evidence upon the questions of value are omitted, being immaterial for the purposes of this report.]

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UNION.

E. Boyle for the appellants: Although, as the appellants are a limited company, they pay no taxes upon the gross value, yet, under s. 4 of the Valuation (Metropolis) Act, 1869, the gross value must be first ascertained and the proper deductions made therefrom in order to arrive at the rateable value.

Besley (*A. H. Bodkin* with him) for the respondents: The premises are of a composite character, being in part, at any rate, a wharf; they should be entered in Class 11 of Sched. III. ("Hereditaments not included in any of the foregoing Classes").

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The property must be put into Class 8, and the description must be altered by substituting the word "manufactory" for "wharf." The assessment will be reduced to 550*l.* gross and 385*l.* rateable value, thus allowing a deduction of 30 per cent. from the gross. The appellants have asked for a greater deduction than they have obtained, consequently they are to have only two-thirds of their costs.

Appeal allowed.

1891.
March 12.

THE SOUTH METROPOLITAN GAS CO. v. THE GREENWICH
UNION.

Gas Company—Accounts—For what Year to be taken—Practice—Appearance by Assessment Committee—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 2.

The overseers, on or before June 1st, 1890, duly made and deposited a quinquennial valuation list, which was duly revised by the assessment committee. On the hearing of the appeal, in March, 1891, the appellants (a gas company) tendered in evidence a calculation of rateable value based on their accounts for 1889, and an alternative calculation based on the accounts for 1890.

Held, that the alternative calculation, being based in part on

events subsequent to the decision of the assessment committee, was not admissible; but, *semble*, that it was open to the appellants to give evidence of facts happening after the decision of the assessment committee, in order to show what the hypothetical tenant might, at the date of the decision, have foreseen.

Admitted by both parties to an appeal, that an assessment committee, when appearing as respondents, must appear in the name of the guardians, and not in their own name.

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Appeals relating to the works, and the mains (both directly and indirectly productive) belonging to the appellants, situated in several parishes.

Poland, Q.C. (*J. Mews* and *Walter C. Ryde* with him) for the appellants, raised a preliminary question: In the respondents' case, the assessment committee purport to appear as respondents in their own names. But by sect. 2 of the Union Assessment Committee Amendment Act, 1864, "The assessment committee may, with the consent of the guardians of" the "union, after notice shall have been sent to every guardian, appear as respondents" to an appeal, "*but in the name of the guardians of such union.*" This section applies to the Metropolis (see s. 1 of the Valuation (Metropolis) Act, 1869), and it is the only section enabling an assessment committee to appear as respondents. If therefore they claim to appear, they must do so in the name of the guardians and not in their own name.

Sir Edward Clarke, S.G., for the respondents: The assessment committee appear with the consent, and in the name of, the guardians.

Poland, Q.C., for the appellants: The quinquennial list, against which this appeal is brought, is directed to be made out before June 1st, 1890. For by s. 42 (1) of the Valuation (Metropolis) Act, 1869, "The overseers shall make and deposit the [first] valuation list before the first of

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June in the first year after the passing of this Act": and by s. 46, a new valuation list is to be made in every fifth year. Consequently, when the overseers made out the list now under appeal, the last published accounts of the appellants were those up to December, 1889. By the time the assessment committee came to revise the list (in the autumn of 1890), the accounts up to June, 1890, were available, and now the accounts up to December, 1890, have been published. The appellants propose to lay first before the Court calculations based on the accounts of 1889, and secondly, calculations based on the accounts of 1890. The list will fix the assessment on which the appellant will pay rates as from April 6, 1891. [Sir P. H. EDLIN: Then this Court might find that the decision of the assessment committee was right at the time it was given, and yet find that it wrongly stated the value on April 6, 1891.] Yes; the question for this Court is, what is the value for the year commencing April, 1891? In answering that question, it is unreasonable, if not absurd, that the Court should ignore the latest facts. The Court have to find what "a tenant might reasonably be expected to pay" for the property: see the definition of "gross value" in s. 4 of the Valuation (Metropolis) Act, 1869. [Sir P. H. EDLIN: Is not the question rather, what a tenant might reasonably have been expected to pay at the date of the decision by the assessment committee?]

Sir *Edward Clarke*, S.G. (*F. M. White*, Q.C., and *C. W. Williams* with him) for the respondents: The calculations of rateable value cannot be based on the accounts of 1890. This appeal is brought under sect. 32 of the Valuation (Metropolis) Act, 1869, which provides that "any ratepayer . . . who may feel aggrieved by any decision of the assessment committee on an objection made before them to which he was a party . . . may appeal against such decision" to the sessions. This Court therefore have to decide merely whether the decision, by which

the appellants "feel aggrieved," was right when it was given. Moreover, the assessment committee, when once they have given their decision, cannot afterwards modify it in consequence of subsequent events. Nor, if those events increase the value of the appellants' property, can this Court raise their assessment. Consequently, if those events diminish the value of the property, the appellants ought not to be allowed to claim a reduction of their assessment on that account. In *R. v. Abney Park Cemetery Co.* [1873], L. R., 8 Q. B. 515, Blackburn J. said, "no injustice will be done if the company are rated in every year according to the value which a hypothetical tenant would give for the occupation in the preceding year, and according to this rule the company's receipts in one year will govern the rateable value of the cemetery in the next." There is a further objection to the use of the accounts of 1890 as the basis of the calculation: by O. 7 (1890), "on or before the 1st February next following the entry of an appeal to quarter sessions, the appellant shall state his case, and the facts to be proved, and the points of law (if any) to be argued in support of the case." The present appellants, after stating a "summary of the calculations, based on the accounts for the year 1889" in paragraph 14 of their case, say—"The appellants are unable within the time fixed by the orders of the Court for stating this case, to furnish the corresponding calculations based on the accounts of the company for the year 1890, but at the hearing of the appeal, evidence will be given, if possible, showing the calculations based respectively on the accounts for the years 1889 and 1890, in order to enable the Court to give their decision on this appeal, on the latest and fullest evidence of value." In effect therefore the appellants are claiming to use accounts which were not even in their own possession at the time when they entered their appeal.

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METROPOLITAN GAS CO.
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Poland, Q.C., in reply: The decision of the assessment committee is a different thing from the grounds of that

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decision. The decision was based on an expectation of events then in the future. The hypothetical tenant must be assumed to have correctly foreseen and to have taken into consideration the events which in fact have happened. It is idle to speculate upon what a tenant might have expected, when the surer evidence of actual fact is obtainable. [Sir P. H. EDLIN: The appellants can claim to be put in a supplemental list, in consequence of the subsequent events, and can come here again next year.] Yes; but meanwhile they will have been paying rates on an excessive assessment. Suppose the appellants, when they put the accounts of 1889 before the assessment committee, state that they anticipate a worse result to be shown by the accounts of 1890: if those accounts, when subsequently made out, in fact bear out the anticipation, this Court ought to see them. It may, in ordinary cases, be fair to rate a company in one year, by looking at the accounts of the preceding year; but the circumstances in the present case are peculiar. There was a great strike among the company's workmen, which culminated in December, 1889, and cost the company 62,500*l*. In addition, there was a rise in the market price of coal, which was not fully felt by the appellants in 1889, in consequence of their having several outstanding contracts at lower prices.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The appellants may be able to get what they want by cross-examination, and so to use events affecting the company, which happened after the decision of the assessment committee. They may say that all these events ought to have been in the mind of every well-informed hypothetical tenant. But I think they are going too far when they claim a legal right to use the actual figures appearing in accounts subsequently published, and to base the calculations of rateable value thereon (*a*).

(*a*) With this decision compare *Agricultural Hall Co. v. St. Mary, Islington*, *infra*, p. 125; *Gaslight and Coke Co. v. City of London Union*,

[The hearing on the merits was proceeded with, and ultimately a compromise was agreed upon between the parties.]

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SOUTH
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THE MIDDLE CLASS DWELLINGS COMPANY, LIMITED v.
ST. GEORGE'S UNION.

1891.
March 16.

*Wharf—Manufactory—Valuation (Metropolis) Act, 1869, Sched. III.,
Classes 5, 6, 8 and 11—Practice—Appeal against rateable value
only—Costs.*

The appellants' premises consisted of land, having a wharf frontage to the Thames, with stables and buildings containing machinery used for the manufacture and storage of timber and other building materials.

Held, that the premises must be put in class 11 of Sched. III. to the Valuation (Metropolis) Act, 1869.

Seem, in an appeal which does not question the gross value, the respondents, although they do not seek to raise the gross value, may give evidence showing that the gross value stated in the valuation list is too low, in order to show that the rateable value therein stated is not too high.

Where the appellants obtained an alteration of the class in which their property was entered in the valuation list, but failed to obtain a reduction of their assessment, the sessions ordered them to pay two-thirds of the respondents' costs.

APPEAL relating to an assessment of 700*l.* gross, and 584*l.* rateable value, in respect of property which was described in the valuation list as "wharf, offices, stables and premises," and was therein entered in class 5 of Sched. III. to the Valuation (Metropolis) Act, 1869, which includes "buildings without land which are not liable to inhabited house duty, and are of a gross value of 40*l.* and upwards."

The appellants did not dispute the gross value, but

infra, p. 204; *London and India Docks Joint Committee v. Poplar Union*, *infra*, p. 153; *South Metropolitan Gas Co. v. St. Olave's*, Met. Rat. App. 305; *London Street Tramways Co. v. Islington*, Ryde's Rat. App. (1886-90) 147; and *London Hydraulic Power Co. v. City of London Union*, *infra*, p. 138.

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claimed a reduction of the rateable value to 518%, and further contended that the property should be entered in class 8 ("mills and manufactories"), or alternatively in class 11, which contains "hereditaments not included in any of the foregoing classes."

The premises were known as Pimlico Wharf, Grosvenor Road, and had a frontage to the Thames; they were not entirely covered by buildings.

The other material facts were thus stated in the appellants' case:—

"5. The appellants are an incorporated company established for the purpose of providing healthy and comfortable dwellings for all classes other than the labouring classes. They have built and are still building large blocks of buildings for such purpose in various parts of the Metropolis, and for the purposes of their business have purchased the property now in question, which consists of (i.) a large workshop consisting of a basement and two floors; (ii.) a timber store and boiler house; (iii.) stables with loft and shed; (iv.) a house only used as stores and offices; (v.) a wharf with crane attached.

"6. The company fitted up and use their workshop for the purpose of sawing timber and manufacturing the doors, window frames, and sashes, and joinery of various kinds used in their business and otherwise, of which they require large quantities.

"7. The workshop contains several large and heavy machines, such as timber saw-frames, general joiners' cross-cut and circular saw benches, planing and moulding machines. All these machines are on the ground floor and are worked by means of a main shafting situated in the basement, and driven by a horizontal 20 horse-power steam engine, also situated in the same building. The boiler supplying the steam is 25 horse-power and is contained in a small building adjoining. The appellants regularly employ in the said workshop a number of joiners and carpenters.

"8. The other buildings are employed for landing and storing timber to be used in connection with the manufacture of the articles aforesaid, and for offices in connection with such manufacture, and for landing other goods."

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Poland, Q.C. (*F. C. Gore* with him) for the appellants: The hereditament, which is the subject of this appeal, is very similar to the premises in question in *Burt, Boulton & Haywood v. St. Mary, Rotherhithe* (Met. Rat. App. 182), which "consisted of a wharf abutting on the Thames, and of land upon which there were a saw-mill and machinery, creosoting works, sheds and tramways. They were used for sawing and creosoting timber and railway sleepers, and for landing and storing such timber and sleepers." It was there contended that the property should be put in Class 8, and a deduction of one-third should be made from the gross: and this deduction was allowed by the Assessment Sessions.

F. M. White, Q.C., and *Danckwerts* for the respondents (*a*): The premises are similar to an ordinary builder's yard, with a little machinery added: they come most naturally within Class 6 ("land with buildings not houses.") The main purpose to which premises are applied must determine the class in which they are to be put; and in order to put the property in Class 8, the Court must find as a fact that the principal object of the occupation is to use the premises as a mill or manufactory. The Court must ask whether the workshops are ancillary to the wharf, or the wharf to the workshops.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We think the premises ought to be put in Class 11.

(*a*) Two counsel were heard by special leave of the Court, under Ord. 13 (1890).

1891. MIDDLE CLASS DWELLINGS Co. v. ST. GEORGE'S UNION.	The appeal was then heard upon the question of value. Evidence was given for the appellants by Mr. W. H. B. Castle, who estimated the rateable value at 518 $\frac{1}{2}$ %, making his calculation entirely independent of the gross value stated in the list. Mr. R. Vigers made a valuation on the assumption that 700%, the gross value stated in the list, was correct, and he deducted therefrom the estimated average cost of repairs, leaving a rateable value of 518%.
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In cross-examination, *F. M. White*, Q.C., asked questions with the view of showing that the gross value stated in the valuation list was too low.

Poland, Q.C., objected: By s. 34 of the Valuation (Metropolis) Act, 1869, "the sessions may confirm or alter the valuation list, *so far as it is questioned by the appeal*, in such manner as they think just, but shall not make any alteration in contravention of this Act." In the present appeal, the gross value is not questioned, and must therefore be assumed to be correct; and, on this assumption, the Court must decide whether a sufficient deduction has been made from the gross to find the rateable value.

F. M. White, Q.C.: The Court has power to consider all issues raised by the appeal, and one issue is whether the rateable value stated in the list is above the true rateable value. The respondents do not seek to alter the gross value, nor is it contended that the Court have power to raise it. If the rateable value is correctly stated it cannot be fair to other ratepayers to alter it because the gross value is too low.

The COURT allowed the questions objected to to be put (a).

(a) See also *Chappell v. St. George's Union*, *infra*, p. 65; *Silverlock v. St. Saviour's Union*, *infra*, p. 67; and *Wood v. St. Saviour's Union*, *supra*, p. 51.

For the respondents, Mr. R. W. Hedley estimated the rateable value at 960% ; to this he added 110% (which he put as the average cost of repairs) in order to arrive at the gross value, having arrived at the rateable value first. Mr. Spencer Chadwick estimated the rateable value at 988%, and said that a deduction of ten per cent. on the gross value (*i.e.*, about 109%) would be sufficient for repairs. [It will be noticed that both the witnesses called by the respondents estimated the rateable value at a sum higher than the gross value stated in the list].

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The CHAIRMAN (Sir P. H. Edlin, Q.C.): This appeal substantially fails. We direct the word "land" to be added after "wharf" in the description of the property in the list: and the class is to be altered to Class 11. But the rateable value must stand unaltered. The appeal is dismissed, but as the appellants have succeeded upon the question of the class, we order them to pay only two-thirds of the respondents' costs.

Appeal dismissed.

CHAPPELL *v.* ST. GEORGE'S UNION.

1891.
July 10.

Appeal as to Rateable Value only—Deduction from Gross—Jurisdiction of Sessions.

Where the appellant did not dispute the gross value, but claimed a larger deduction therefrom in order to arrive at the rateable value, the sessions admitted evidence as to the gross value, in order to show that the appellant was not over-rated.

APPEAL relating to a wharf, with workshops, stabling, sheds, and builder's yard, known as 112, Grosvenor Road.

The premises were very similar to those described in *Middle Class Dwellings Co. v. St. George's Union, supra*, p. 61, and, on the authority of that case, the respondents were ready to consent to an order that the premises should

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be put in Class 11 of Sched. III. to the Valuation (Metropolis) Act, 1869. The question of the class was, accordingly, not seriously disputed.

The Overseers had assessed the premises at 1,000% gross and 834% rateable value; and the assessment committee had increased the assessment to 1,200% gross and 1,000% rateable. The appellant did not dispute the gross value, but claimed a deduction of one-third therefrom in order to arrive at the rateable.

Alex. Glen for the appellant: The respondents in their case allege that the gross value stated in the valuation list is too low. The Court have no jurisdiction to inquire into anything except the question of class, and the amount of the deductions from the gross value. By sect. 4 of the Valuation (Metropolis) Act, 1869, "the term rateable value means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, &c." The assessment committee had two questions to decide—(1) what was the gross value; (2) what was the proper deduction therefrom to find the rateable value. The second decision is independent of the first, and it is this one only which is now disputed.

Poland, Q.C. (Danckwerts with him) for the respondents: In *Middle Class Dwellings Co. v. St. George's Union*, *supra*, p. 61, the entire question of value was allowed to be considered. [They did not contend that the sessions had power to raise the gross value].

The Court held that evidence might be given as to the gross value, in order to show that the appellant was not over-rated; and in the cross-examination of the appellant's first witness, it appeared that in the return (as to rent, &c.) made by the appellant to the overseers under sect. 55 of the Valuation (Metropolis) Act, 1869, it was stated that the appellant paid a rent of 650% under lease, and no

mention was made of the fact that a premium of 5,000*l.* had been paid.

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Alex. Glen : If the Court are entitled to go into the question, what is the true gross value, I cannot say on this evidence that the rateable value is too high.

The CHAIRMAN (Sir P. H. Edlin, Q.C.) : In the face of the fact that the payment of the premium was suppressed, how can the appellant ask to tie the Court down to the question of the amount of deduction from the gross value? The appellant's own evidence satisfies us as to the rateable value of the premises; he has failed to show that he is over-rated.

Glen asked for a case for the opinion of the Queen's Bench Division.

Sir P. H. EDLIN, Q.C. : We refuse a case. The question is not a novel one.

Appeal dismissed : case refused.

SILVERLOCK *v.* ST. SAVIOUR'S UNION.

1891.

October 28.

Deductions from Gross Value—Machinery.

In an appeal in which the gross value stated in the valuation list was not disputed, the respondents contended that some of the repairs, for which a deduction from the gross value was claimed by the appellants, were repairs to machinery which might have been, but was not in fact, rated.

Held, that in calculating the deduction from the gross value, it must be assumed that all that was rateable had been rated.

APPEAL against an assessment of 1,400*l.* gross and 1,150*l.* rateable value in respect of premises containing printers' and lithographers' machinery and plant. The overseers

1891. SILVERLOCK <i>v.</i> ST. SAVIOUR'S UNION.	and the assessment committee had put the property in Class 8 of Sched. III. to the Valuation (Metropolis) Act, 1869 ("Mills and Manufactories"), but had not allowed the full deduction of one-third permitted in that Class; it was not suggested that the premises were not rightly put in Class 8, and the appellants did not dispute the gross value stated in the list.
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Poland, Q.C. (R. Cunningham Glen with him) for the appellants: The actual cost of repairs, insurance, &c., exceeds the allowance of one-third of the gross value; the maximum should therefore be deducted in this case.

G. E. Lyon (G. Elliott with him) for the respondents: The deduction claimed by the appellants represents, in part, the cost of repairing machinery which has not been taken into account in calculating the rateable value of the premises. The appellants have, therefore, escaped from being rated in respect of the machinery, the repairs of which it is now sought to deduct from the gross value.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): Even though the respondents have omitted some of the machinery, still the Court must allow a deduction for the repairs of what is omitted. We must assume that all that is rateable has been rated.

Evidence as to the cost of the repairs was given upon this basis, and the Court found that the proper amount was 440*l.*, and reduced the rateable value to 960*l.*, giving the appellants their costs (a). *Appeal allowed.*

(a) With this case compare *Middle Class Dwellings Co. v. St. George's Union*, *supra*, p. 61, and *Chappell v. St. George's Union*, *supra*, p. 65.

CALLINGHAM *v.* ST. LUKE'S, CHELSEA.1891.
March 16.*Hotel—Profits—Admissibility of Evidence.*

The appellant, whose premises had been formerly used as a public-house, and had recently been converted into an hotel, tendered evidence of the business actually done by himself.

Held, that the evidence was admissible, even if it were not the sole criterion of value.

APPEAL against an assessment of 700*l.* gross and 584*l.* rateable value, in respect of the Cadogan Hotel, No. 75, Sloane Street.

Alex. Glen for the appellant: The premises are held under lease, granted in 1885, and assigned to the appellant in 1887, at a rent of 500*l.*, a small premium having been also paid. They were formerly occupied as a public-house, but the appellant having obtained the new lease, has altered the premises into an hotel, the alterations having been completed in May, 1890. His business is, therefore, only recently established, and neither the rent nor the structural value of the buildings can be good evidence of the present value of the premises. The appellant's accounts showing the actual business done are the best evidence. If the lease of the premises and the business were offered for sale the accounts would be the first thing an intending purchaser would call for. In *Midland Ry. Co. v. St. Pancras*, Ryde's Rat. App. (1886—1890), 121, the assessment sessions admitted evidence of the actual business done at the St. Pancras Station Hotel. In *Clarke v. Alderbury Union* [1880], 6 Q. B. D. 139, the Queen's Bench Division held that the earnings of the refreshment room at Salisbury Station were admissible evidence. In *London and Provincial Temperance Halls Co. v. St. Saviour's*, Ryde's Rat. App. (1886—1890), 95, the assessment sessions admitted evidence of the actual profits made by letting a public hall for meetings and entertainments. In

1891. all cases where no better test of value can be found, the evidence of actual profits is admissible.

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F. Marshall for the respondents: This hotel is not of an exceptional character, and evidence of profits is inadmissible. In *Midland Ry. Co. v. St. Pancras* no objection was taken as to the admissibility of the evidence. In *Lafone v. St. Olave's Union*, Met. Rat. App. 278, evidence of business actually done at Butler's Wharf, on the banks of the Thames, was rejected by the assessment sessions.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The cases of gasworks and waterworks are very different from this one; but even if we do not decide on the accounts alone, I think we may look at them in the present case (a).

The COURT then heard the appeal on the question of value, and dismissed it without calling on the respondents.



1891.
June 19.

BONSALL AND BARROW v. CITY OF LONDON UNION.

Hotel—Takings—Admissibility of Evidence.

Where an hotel had been carried on for some years before the hearing of the appeal, the sessions held that evidence of the actual takings of the occupier was inadmissible.

Midland Ry. Co. v. St. Pancras, Ryde's Rat. App. (1886-90), 121, distinguished.

APPEAL relating to the Castle and Falcon Hotel, Aldersgate Street.

The case calls for a report only upon a point raised as to the admissibility of certain evidence.

The appellants had carried on the hotel for six years,

(a) See the next case.

having bought the lease granted in 1858. One of the expert witnesses for the appellants was asked what the actual takings of the appellants in their business had been. Counsel for the respondents objected to the evidence.

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E. Page for the appellants: The amount of the takings is some evidence as to the value of the premises as an hotel, though no doubt the Court are not bound to act upon it. In *Midland Ry. Co. v. St. Pancras*, Ryde's Rat. App. (1886-90), 121, the rateable value of the St. Pancras Station Hotel was calculated solely on evidence of actual profits.

Poland, Q.C. (*R. Cunningham Glen* with him), for the respondents: An hotel which forms part of a railway station is of an exceptional character; the evidence was admitted because such an hotel is not ordinarily in the market to be let. On the same ground, evidence as to the profits of the refreshment room at Salisbury Railway Station was admitted in *Clarke v. Alderbury Union* [1880], 6 Q. B. D. 139. [He also referred to *Callingham v. St. Luke's, Chelsea*, *supra*, p. 69.]

The CHAIRMAN (Sir P. H. Edlin, Q.C.): You may ask the witness whether he has, in forming his opinion, ascertained the amount of the actual takings, &c., but I do not think you can go further. We have never admitted evidence of this kind in cases like the present. To do so would open up questions as to the management.

The appeal was heard on other evidence, and dismissed.



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March 20.

LONDON COUNTY COUNCIL *v.* ST. GILES-IN-THE-FIELDS
AND ST. GEORGE'S, BLOOMSBURY.

*Appeal against Totals—Compromise—Alteration of Details—
Mandamus.*

On an appeal against totals, the parties agreed, by way of compromise, that certain additions should be made to the totals entered in the valuation list. It had been alleged by the appellants that certain hereditaments (specified in their case) were under-assessed, and that certain other specified hereditaments were entirely omitted from the list; but in the agreement for a compromise, no specific amounts were set down as attributable to under-assessments or omissions. On an application for judgment in accordance with the agreement, the quarter sessions refused to make the suggested alterations in the valuation list, unless evidence were given showing the details in respect of which the agreed additions were to be made.

Held, by the Queen's Bench Division, that in so refusing, the sessions had wrongly declined jurisdiction, and that a mandamus to hear and determine the appeal according to law must issue.

On an appeal against totals, the details in the valuation list, making up those totals, cannot be altered.

Fulham Union v. St. Mary Abbotts, Ryde's Rat. App. (1886-90), 86; 17 Q. B. D. 394, followed.

APPEAL against totals (a).

The totals entered in the valuation list for St. Giles-in-the-Fields were 267,333*l.* gross, and 222,831*l.* rateable. The appellants in their case contended that these figures were too low to the extent of 11,345*l.* gross, and 9,445*l.* rateable, and the parties had agreed, by way of compromise, to an addition of 6,240*l.* gross, and 5,208*l.* rateable, to the existing totals.

A compromise, involving a much smaller addition, had been agreed upon as to St. George's, Bloomsbury. For the purposes of this report, it is not necessary to state the figures relating to that parish.

(a) For earlier proceedings in this appeal, *vide supra*, p. 38.

H. E. Ivory for the appellants: The Court are asked to make the alterations in the totals, in accordance with the terms agreed upon, by substituting the figures as altered for the existing figures.

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Buckmaster for the respondents consented to the application.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): Ought we not to see a statement showing in respect of what hereditaments the alterations in the totals are to be made? The assessment committee now admit that certain hereditaments are under-assessed; and, to be consistent, they ought at the next quinquennial valuation to increase those assessments. The ratepayers whose property is included in the list of hereditaments objected to by the appellants ought to know in respect of what matters the increase in the totals has been agreed upon. Even though we cannot alter the separate assessments, I think the particulars as to those assessments are material, and that we ought to have them.

The motion was ordered to stand over, that the particulars might be furnished.

The application was renewed.

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March 26.

H. E. Ivory for the appellants: If the Court think proper, the form of the proposed alteration in the valuation list may be amended by stating the addition to be made to the existing totals, which need not then be erased. It is impossible to give the particulars asked for by the Court on the last occasion. The agreed additions are the result of a compromise. If the appeal be left to come on for hearing in the ordinary course, the appellants will simply tender in evidence the respondents' offer to compromise, which is made unreservedly, and not without prejudice.

1891. No other evidence will be given, and the Court must decide upon the evidence before it. [Sir P. H. EDLIN: You have based your appeal on the particular instances set out in the case.] The same course was pursued in *Fulham Union v. St. Mary Abbots, Kensington*, Ryde's Rat. App. (1886—1890), 86. In that case, Mathew, J., drew attention (*Ib.* p. 91) to the arithmetical absurdity of altering the totals, and leaving the separate items untouched: he said, "It may be that the legislature thought the inaccuracy referred to so unimportant that no special provision was made to correct it."

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Buckmaster for the respondents in support of the application: The anomaly caused by an alteration of the totals was seen, and disregarded, in 1881, by the assessment sessions, in *Overseers of St. Olave v. Assessment Committee of St. Olave's Union*, Ryde's Met. Rat. App. 287.

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April 4.

The CHAIRMAN (Sir P. H. Edlin, Q.C.) read the following judgment: In this case we have refused to alter the totals in the valuation list in the manner required by the litigant parties, and the appellants having stated that we are bound to do so, and declared their intention of applying for a *mandamus*, we have thought it desirable to state more fully our reasons for that refusal. It should have been unnecessary to remind the parties that we are sitting here in a Court of Appeal to perform judicial functions, not as clerks to adopt without question agreements, in obedience to their behest. We can well understand that in the adjustment of many differences it might be more convenient to the parties to disregard detail and particular errors, and agree upon an alteration of values in bulk; but when there has been a joinder of issue as to each particular error alleged, it is difficult to see how that could be accepted as a judicial decision. In assessment appeals at the suit of private individuals or public com-

panies, it frequently happens that, before the hearing, mutual concessions are made, and the parties agree together as to what are the proper values, &c. In such cases the Court gives effect to the mutual agreement by a simple correction of the figures, and it may be also of the "description" or "class" in the valuation list; and it is obvious that the entire entry, as so corrected, presents a complete adjudication. The case now before us is of an entirely different character. The appellants are a public body authorized to levy rates and require contributions payable out of rates, and they have presented a petition to this Court complaining of the valuation by the assessment committee of the united parishes of St. Giles-in-the-Fields and St. George's, Bloomsbury; and in the particulars furnished in the "case" accompanying their petition, they have set forth the several hereditaments which they allege are *under-assessed*, and also certain other properties which they allege are *not assessed*, that is to say, which have been altogether omitted from the valuation list. The former are fifty-three in number, and comprise premises of various kinds—shops, Meux's Brewery, Novelty Theatre, hall, public-houses, baths, offices, &c. In respect of each of these distinct properties, the appellants present their own valuation. Then, with regard to the properties *not assessed* (twenty-eight in number), separate valuations have also been made by the appellants. Therefore upon this appeal, if we look only at the several assessments specified, irrespective of the proper deduction to be made from gross value in order to fix the rateable value, eighty-one distinct issues are raised. The respondent committee assert their ability to answer the appellants' case *in detail*, and to support their own valuations, and they allege also that the appellants have not furnished figures. In point of fact the appellants had furnished figures, showing, with regard to each property respectively, the required alterations in, or additions to, the list. What has transpired since the respective cases were lodged we know not, but

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when the appeal first came on for hearing we were asked to determine it by simply erasing the present totals in the valuation list, and substituting therefor other figures, which would involve an addition in St. Giles's Parish of 6,240*l.*, to the total *gross*, and 5,208*l.* to the total *rateable* value; and in St. George's an addition of 350*l.* to the gross and 292*l.* to the rateable value—without making any entry in the valuation list that would show in respect of which properties, whether as to those *under-assessed* or those *not assessed*—nor, if referable to the former only, in respect of *which* of the present assessed values—these additions to the totals are made. This we declined to do. Such an erasure of the arithmetically correct totals and substitution of other figures would present a manifest incongruity on the face of the valuation list. It is now desired that we should simply subjoin an additional amount—the one agreed upon—for “gross” and “rateable” respectively, and write thereunder the desired new totals “*as agreed.*” It seems to us that this also would be insufficient and not less unsatisfactory. The statute empowers the Court to confirm or alter the valuation list, so far as it is questioned by the appeal, in such manner as we think just [see s. 34 of the Valuation (Metropolis) Act, 1869]; and we do not think that the mere inscription of one total for another, thus avoiding all reference to the questions raised under both heads, would meet the just requirements of this case. In short, we cannot accept the agreement, in the form in which it is here presented, as in itself a proper one, or as sufficiently precise and explicit to enable us to determine the questions raised upon this appeal. There being several similar appeals awaiting trial, it may be as well that I should add a few words. It is not to be inferred that in every case such as this we should require the several corrections, constituting the total of the alterations agreed upon between the parties, to be specified with distinct reference to the particular assessments impugned; although if an agreement be arrived at after

due consideration of each alleged error, there ought not to be any difficulty in furnishing that information: and when non-assessments as well as under-assessments are complained of—as in this case—the simple insertion of one additional sum, possibly intended to relate in part to both, but not shown to be referable to either, would be the less defensible. If the Court abstained from exercising judgment and dispensed with supervision, the parties might agree upon deductions for repairs and insurance in excess of the maximum allowed by the statute; and practically in no appeal against totals would it be necessary for the appellants to specify particular errors or omissions; a general impeachment of the total of the values in a parish would suffice to effectuate an agreement for an unexplained addition to it. The case of *Fulham Union v. St. Mary Abbotts*, Ryde's Rat. App. (1886—1890), 86, cited by the appellants' counsel, has no bearing upon what we have here to consider; nor is the objection to the entry prescribed for us in this case answered by pointing out that the alteration of the totals would not affect the ratepayers whose assessments were impugned. It would not, *apart from the rest*. It would, I presume, subject the ratepayers as a body to a heavier poundage to meet the increase in the parochial contribution arising from the unappropriated addition to the total in the valuation list. Inequality in assessments is a ground of appeal, and were it only in view of future valuations, intermediate or quinquennial, every ratepayer may justly claim to be informed what are the properties in his parish which the assessment committee publicly admitted were either under-estimated or altogether omitted. The pleadings filed in this Court are not open for inspection by ratepayers; nor, were this otherwise, would those in the present case throw any light on the proposed alteration in the totals. Mr. Avory was not correct in saying that it had become the duty of the County Council to "*revise*" the list, that is the statutory duty of the assessment

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committee: but, of course, the larger the parish totals constituting the Metropolitan valuations upon which contribution has to be levied *pro rata* for general county purposes, the smaller would be the nominal rate upon the whole required to produce it: and in this practical effect of an increase in the valuations may be seen the importance attached to these appeals. Every assessment committee in the county, nay more, every ratepayer in the Metropolis, might have appealed to this Court upon the same grounds as the present appellants have done, and it may be that but for this proceeding on the part of the County Council, others would have undertaken the task. Hence the greater reason that the judgment should be intelligible to all persons interested, and be directly pertinent to the issues raised.

The appellants obtained a rule *nisi* calling upon the justices for the county of London to show cause why a mandamus should not issue directing them to make the alterations in the list agreed upon between the parties.

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Poland, Q.C. (*C. A. Russell* with him) showed cause: This is, in effect, an application for a mandamus to give judgment in a particular way: no such mandamus can be granted. There has been no absolute refusal to hear and determine, but merely a refusal to give judgment in a particular way in the absence of certain particulars which the justices held they were entitled to have. That ruling is a judicial decision, which, even if it be erroneous, the Queen's Bench Division cannot overrule by means of a mandamus. By s. 34 of the Valuation (Metropolis) Act, 1869, the sessions "may confirm or alter the valuation list, so far as it is questioned by the appeal, in such manner as they think just, but shall not make any alteration in contravention of this Act": and by s. 52 "the deductions to be made from the gross value shall not exceed the amounts

in the Third Schedule." It is very possible that improper deductions from the gross value may have been agreed upon between the parties: and the justices were entitled to know whether they were asked to sanction "an alteration in contravention of the Act."

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F. M. White, Q.C., and *H. E. Avory* in support of the rule: It is not disputed that a mandamus to decide in a particular way cannot be issued; but if a judicial officer refuses to exercise his jurisdiction, or imposes upon his adjudication a condition which is outside the law, a mandamus will be granted. In *R. v. Adamson* [1875], 1 Q. B. D. at p. 205, Cockburn, C.J., said: "Nothing can be clearer than that this Court [the Queen's Bench Division] has, in the absence of express statutory provision, no appellate jurisdiction to review the decision of magistrates who have once heard a case and decided it in a matter within their jurisdiction. If I could see my way to the conclusion that the magistrates have considered the evidence and given a decision upon it, I should certainly say that the Court could not act upon the matter further, or send the case back to the magistrates: but . . . I cannot resist the conclusion that the magistrates must have acted upon a consideration of something extraneous and extrajudicial which ought not to have affected their decision, and which, it seems to me, was the same as declining jurisdiction." The judgment of the learned chairman shows that the sessions in this case were influenced by considerations which ought not to have affected their decision. For in *Fulham Union v. St. Mary Abbots*, Ryde's Rat. App. (1886—1890) 86, it was held that an appeal against totals does not affect the individual assessments: and s. 52 of the Valuation (Metropolis) Act, 1869, which regulates the deductions from gross value, applies only to individual assessments. It was not suggested, in fact, that any illegal deduction had been made. It is not contended that the sessions are bound to register every settlement that the

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parties may agree to. The sessions may have a right to ask for the details, but if (as in the present case) it is impossible to give them, the totals must be altered without them. In the judgment, the "issues raised" in the appellants' and respondents' cases are spoken of: there is a joinder of issue as to the totals, but not as to the details. The sessions thought the proposed alteration unjust, because it did not refer to the details; but it would be more unfair to give than to conceal the under-assessment of a particular ratepayer.

In the course of the argument it was suggested to the appellants and accepted by them, that the proper form of the rule should be for a "mandamus to hear and determine according to law."

A. L. SMITH, J. (a): This is an application on the part of the London County Council for a writ of mandamus to Sir Peter Edlin to hear and determine according to law an appeal lodged by the London County Council against two parishes whose names have been stated in this case.

I wish to say the judgment I am about to pronounce is only applicable to the facts of this case, and not to generalities at all, because the circumstances here are peculiar, and the position which has been taken up by the learned judge is also, I think, unique. I am not speaking from a very long experience, but in the experience I have had, except in one case, I never knew of a judge refusing to enter judgment come to by a valid agreement between the parties, and by valid agreement I mean acquiesced in by clients and counsel.

Now the facts of this case arise in this way. The

(a) The judgments of the two judges in the Queen's Bench Division are taken from the shorthand notes of the proceedings, which agree with the notes taken independently by the editor, in proving that the judgments as pronounced contain inaccuracies, due either to a misconception of the facts or to unintentional *lapsus lingue*.

London County Council objected to the under-valuation of the two parishes, the parish of St. Giles-in-the-Fields and the parish of St. George's, Bloomsbury, and I only take one figure because there are many figures in this case which will emphasise or accentuate the point which I wish to discuss, and that is this—the gross rateable value of the parish of St. Giles-in-the-Fields was 267,333*l.*; the London County Council said that was too little, and it was too little by 11,345*l.* That was the dispute at the quarter sessions before Sir Peter Edlin. The other side said, You are wrong in saying that that is too low by 11,345*l.* I need not go into the other figures, because they are all of the same gross rateable value; the same principle applies to each. They wanted to have decided by Sir Peter Edlin and the magistrates assembled whether the London County Council was right in putting up the gross rateable value of this parish over and above 267,333*l.* to the amount of 11,345*l.* more, and the case went down there, and when the case got down there, the learned counsel being present, Sir Peter Edlin was informed that the parties had come to an agreement, and that they had agreed that, instead of the amount being put up to the extent of 11,345*l.*, the proper sum by which the gross rateable value should be increased was by the sum of 6,240*l.* That agreement must be taken to have been an absolutely valid agreement between the litigants, the parish and the London County Council, and entered into with the assent of both, and adopted by the learned counsel for both on each side. There is no suggestion that that is not the true amount which should be added to 267,333*l.* Those facts must be taken to have been before Sir Peter Edlin. Sir Peter Edlin said he would not accept that, and the real reason he gave, as appears from the most careful judgment which he has given is, that he would not alter the total from 11,345*l.* to 6,240*l.*, because he wanted to alter the details showing how that total was arrived at, and he refused to

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adjudicate upon the evidence or the consent given before him.

Now the question is, whether or not Sir Peter Edlin was right, or I should say rather, the question is, whether or not this Court can proceed by way of mandamus to Sir Peter Edlin. That is the difficulty in the case. If I were asked whether he did that which most people would do under the circumstances or what nearly everybody would do under the circumstances, I should be bound to say no; but the question is, whether this Court has jurisdiction by way of mandamus over the justices. It is familiar law that Sir Peter Edlin being a judicial officer no mandamus will go to direct him to perform a judicial act in a certain way. That is familiar knowledge; no one doubts it, and, indeed, Mr. Meadows White does not dispute it, and the only way, it seems to me, in which a prerogative writ can go from this Court to a justice exercising judicial functions, is to command him to hear and determine according to law, and if he has heard and determined according to law, although he may have unreasonably determined according to law, this Court cannot issue a mandamus directing him to hear and determine. The question is, has he heard and determined according to law. The section under which this jurisdiction arises is s. 34 of the Valuation (Metropolis) Act, 1869. I wish to point out, before I come to s. 34, that by s. 32 and anterior sections, all that Sir Peter Edlin and his co-magistrates had to do in determining this point, was as to the totals of the valuation list. He had, sitting there, nothing to do as regards determining between any person and the ratepayers, the amount of the details of the ratepayers' valuation, although it is quite true, that if this case had been fought before him, it would have been necessary to have gone into details as to the amount, in order to determine which party was right. But it was only *quâ* total that he was called upon to adjudicate. The 34th section says: "The justices in special sessions and in

assessment sessions respectively, shall, in open Court, hear and determine all appeals brought before them in such order as they may respectively from time to time appoint."

What is the meaning of that? It seems to me that the proper reading of that section is, that the justices in special sessions and in assessment sessions shall in open Court hear and determine, that is, hear and determine according to law. It does not mean hear and determine not according to law, but hear and determine according to law.

Now, what is hearing and determining according to law? I will put the case which I mentioned during the argument. The case comes into Court; one witness is called on each side, and, as has been put by my learned brother Charles, one witness called by the appellant says the right figure is 6,000%, and the other side says, "I will put my witness in the box, and he says 6,000%, and that is all the evidence I am going to put before you." Now, what is hearing and determining according to law upon that state of facts? It seems to me that upon the hearing they determine that the amount shall be 6,000% and nothing less, because that is the sole evidence which the judge has before him—mind you, always assuming that that is applicable to the present case I am discussing, and always assuming that there is no suggestion that that is not the right sum that should be adjudicated in the case. Those are the premises I found my decision upon in this case. Can it make any difference that before these two witnesses are called into the box, the learned counsel come into Court and say: "My lord, the parties have seen each other with their witnesses, and agree that 6,000% is the proper amount"? It seems to me, there being nothing to impeach the sum arrived at by the learned counsel with the consent of their respective clients, that to hear and determine according to law would be to hear and determine that 6,000% shall be entered as the total. It will be understood that I have not got my figures right, because

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1891. they are a great deal more than 6,000*l.* and 11,000*l.* Then the section goes on and says the Court may adjourn the hearing, and so on, which we need not deal with. Now, what may they do? The Court may confirm or alter the valuation list so far as it is questioned by the appeal. What is "questioned by the appeal"? The total and nothing else is questioned by the appeal from beginning to end. Therefore, they may alter the totals; they may confirm or alter the valuation list as far as it is questioned by the appeal. I should think that "may" must there be read "must." I should say that it means that they may confirm or alter the valuation list so far as it is in relation to the appeal in such manner as they think just, "but shall not make any alteration in contravention of this Act." There is no suggestion in this case that Sir Peter Edlin was asked to make any alteration in contravention of this Act.

Then as to the concluding words, "And any alteration shall be made by the justice acting as chairman of the sessions in that list, and the said justice shall place his initials against such alteration." It seems to me that what was said by my Lord Field in the case of *R. v. Adamson* [1875], 1 Q. B. D. at p. 207, is very apposite to the point I have in hand. That was a case in which a summons was taken out before justices for conspiracy against A., B. and C., and evidence was given, and the justices would not grant the summons although under Jervis' Act, or the Summary Jurisdiction Act, they may grant a summons if they think fit. That means, of course, according as the evidence shall dictate. The justices here held their hand. When it came before the Court of Queen's Bench, before Chief Justice Cockburn, Mr. Justice Blackburn and Mr. Justice Field, the evidence I may say almost conclusively proved that a conspiracy had taken place, and the learned judges came to the conclusion that the justices could not have exercised their discretion on the evidence before them, but must have taken into consideration some-

thing which they had no right to take into consideration, or otherwise they must have granted the summons. This is how Lord Field sums it up:—"What the justices have to consider is, whether there was *primâ facie* evidence of a criminal offence which, in their judgment, calls upon the alleged offender to answer. If they think that there is such *primâ facie* evidence, it is their duty to issue summonses. Now if the justices had said 'We don't believe the evidence,' or given any other reasonable ground for refusing to grant what was asked for, we should not interfere." I agree with that. We certainly should not interfere if any such suggestion had been made in this case. "But I have come to the conclusion that they acted as they did, not because they disbelieved the evidence, but from a consideration apart from the facts which they ought not to have taken into account." Now, reading Sir Peter Edlin's judgment which he has sent to this Court, it seems to me that he is not in a position to alter the details of the valuation list, which in my judgment he had no power to do.

The case of *Fulham Union v. St. Mary Abbotts*, Ryde's Rat. App. (1886-90) 86; 17 Q. B. D. 394, to which I was a party, went into what was requisite to be inquired into, the totals alone being altered. My brother Mathew pointed out there, and I have no doubt correctly, that in examining into totals you have nothing to do as to altering valuations; but, of course, he also said in that case, if the question of totals is fought out you must go into details for the purpose of seeing whether the total is right. But it seems to me that Sir Peter Edlin says, I will not enter judgment according to the sole evidence which I have before me, that is, that 6,240*l.* is right, because I am of opinion that the details ought to be altered by me so as to make up the grand total at the bottom when the 11,345*l.* is altered to 6,240*l.*

It seems to me that there was a wrong decision in this case. I think the rule should be made absolute to hear and determine according to law.

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CHARLES, J.: I am of the same opinion.

It is necessary, in order to arrive at a correct decision in this case, thoroughly to appreciate what it was that was the subject-matter of the appeal to the general assessment sessions. Now it is an appeal against the total of the value of a particular parish, namely, St. Giles-in-the-Fields, and it was an appeal brought in pursuance of the thirty-second section of the Valuation (Metropolis) Act, 1869, which enables, among other persons, any body of persons authorized by law to appeal if that body of persons feels aggrieved by reason of the totals in the parish being too high or too low. In this case the London County Council appealed by virtue of the provisions of that section. It thereupon became the judicial duty of the assessment sessions in open Court to hear and determine that appeal when it was brought before them, and upon the hearing and determining of it to confirm or alter the valuation list so far as it was questioned by the appeal in such a manner as they might think just; but they are not to make any alteration in contravention of this Act. When the appeal came before the assessment sessions upon the 20th March the justices were informed that the parties had arrived at an agreement, and thereupon the learned chairman of the sessions asked for the particulars in detail of the alteration which had resulted in a fresh total gross value of the parish, the original gross value having been 11,345 $\frac{1}{2}$ l., the parties had agreed that the true (my learned brother has emphasized this, and I desire to emphasize it too) that the true gross value of the parish was 6,240 $\frac{1}{2}$ l. Then said the chairman, give me details of the way in which you get at that 6,240 $\frac{1}{2}$ l., because otherwise this singular result would follow—the total will be altered from 11,345 $\frac{1}{2}$ l. to 6,240 $\frac{1}{2}$ l., and yet if the details are looked at it will be seen directly that there is a manifest incongruity, and the details bring out the old figures instead of the new and agreed figures. It was then pointed out by Mr. Avory that, although he would do his best, in all probability the task which was

proposed was an impossibility. However, there was an adjournment to see what could be done, and on the 26th March Mr. Avory informed the learned chairman it had been found impossible to give the exact figures of the alterations in detail. At first one did not quite see why it was impossible, because a rule of three sum would have enabled it to be done. It by no means follows that because the gross total is 6,240*l.* that each and every hereditament, both those omitted and those under-assessed, are in the same proportion. It is highly improbable that that would have been the case, and therefore it was found impossible to give the learned chairman the information which he required, and thereupon the judge declined to enter the judgment in the appeal and declined to act upon the powers given to him by s. 34 of the Valuation (Metropolis) Act, 1869, by placing his initials against the altered list. Why did he do so? If I may be allowed to say so, in the very clear judgment with which he has been good enough to favour us, he tells us exactly why he declined to do so. He says: "I declined to make any alteration because I considered that the justices had a right to the information with reference to the details of the list. Such an erasure of the arithmetically correct total and substitution of other figures would present a manifest incongruity on the face of the valuation list." Further, he says he thinks the details themselves ought to be altered as well as the totals, and he thinks so for, amongst other reasons, because he is of opinion that the ratepayers may justly claim to be informed what are the properties in the parish which the assessment committee has under-assessed, or, if they have omitted any properties, what are the properties which the assessment committee has altogether omitted. With great deference to him, I think that was a reason which he was not justified in giving, and I think, therefore, to adopt the language of Lord Field in *R. v. Adamson* [1875], 1 Q. B. D. 201, that in this case he has refrained from making the necessary

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alterations in the list and placing his initials against the necessary alterations from a consideration apart from the facts which he, or rather, which he and the other justices ought not to have taken into account. If that be so, the case really, if authority is wanted, is governed by the case of *R. v. Adamson*. Although he is a judicial officer, inasmuch as he has refrained from determining the case for reasons which he ought not to have taken into account, he becomes liable to a mandamus to hear and determine according to law. That the reason was a mistaken one is, I think, apparent from the case, to which reference was made, of *Fulham Union v. St. Mary Abbotts*, Ryde's Rat. App. (1886-90), 86; 17 Q. B. D. 394. In that case the learned judges (one of whom was my learned brother) held that the thirty-third section of the Valuation (Metropolis) Act, 1869, did not apply to a case where the subject matter of the appeal was the total value and not the value of the hereditaments considered separately. Mr. Justice Mathew in giving judgment points out that the result of their holding may be that a manifest incongruity may appear on the list. He says: "It was argued for the respondents that if the totals were altered without altering the assessment of particular hereditaments in the valuation list the absurd consequence would follow that the total value found to be correct by the assessment sessions would differ from the total values arrived at by adding up the particular assessments in the valuation list. But the result of increasing the total values, leaving the particular assessments untouched, would only be to increase the sum to be contributed by the parish, and to compel the parish authorities to make higher rates." "It may be," says the learned judge, "that the legislature thought the inaccuracy referred to so unimportant that no special provision was made to correct it." It appears to me that it would be a strange thing if the general assessment sessions could alter the details that make up the general total upon such an appeal as the present, an appeal to which the ratepayers

are no parties, and an appeal to which, according to this decision in the case of *Fulham Union v. St. Mary Abbots*, they could not properly have been made parties.

I think, therefore, that the learned chairman has given a wrong and ineffective reason for the course which he has adopted.

I do not desire to add anything to what my learned brother has said on the question of what is a proper hearing and determination according to law. I agree with what he has said on that matter. I think, inasmuch as a wrong reason was given, that being the only reason relied upon by the chairman, that we ought to make this rule absolute to hear and determine according to law.

A. L. SMITH, J. : The rule will go in the form that they are to hear and determine the appeal according to law. We say nothing else.

Rule absolute.

The appeal came before the quarter sessions, to be heard and determined, in obedience to the mandamus.

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F. M. White, Q.C. (*H. E. Ivory* with him), for the appellants: It is for this Court to determine what the precise form of the entry in the valuation list shall be.

The following evidence was given for the appellants:—

Mr. E. C. Davies (of the Solicitor's Department at the London County Council) said he was in charge of the case. Mr. Harper, the Council's valuer, was authorized to make a proposal to the parishes. The vestry passed a resolution, which was discussed by the Local Government and Taxation Committee of the County Council. The proposal was an addition in a lump sum, with no exact figures relating to separate hereditaments, and no apportionment to omissions from the valuation list, and to under-assess-

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Mr. Spencer Chadwick said he had been instructed to assist the County Council's valuer: he considered the compromise reasonable. In his own calculations, he divided the proposed additions in St Giles-in-the-Fields thus: under-assessments, 3,640*l.* gross and 3,040*l.* rateable; omissions, 2,600*l.* gross and 2,168*l.* rateable; making in all an addition of 6,240*l.* gross and 5,208*l.* rateable, which was the settlement agreed upon. He was unable to say in what way the respondents arrived at the figures.

Buckmaster for the respondents consented to the proposed additions, but called no evidence.

The CHAIRMAN (Sir P. H. Edlin): In this case we have the great advantage of being instructed by the judgments of a Divisional Court as to the legal obligation upon us with regard to the agreement to which the litigant parties respectively have come, and it is of course our duty to act in accordance with those judgments; but I trust I may be pardoned for pointing out that the learned judges would seem to have entirely misapprehended the grounds upon which our decision upon the motion before us proceeded. I have here the shorthand-writer's notes: and it appears therefrom that Mr. Justice A. L. Smith said that I would not alter the total from 11,345*l.* to 6,240*l.* because I "wanted to *alter* the details shewing how that total was arrived at." And again, further on, the same learned judge ascribes to me that I said I would not alter the totals, "because I was of opinion that the *details* ought to be '*altered*' so as to make up the grand total at the bottom, when the 11,345 is altered to 6,240." So also Mr. Justice Charles is stated to have said "the chairman thinks the *details* themselves ought to be *altered* as well as the totals." I should observe that some similar opinion to this was sought to be attributed to me by counsel in this Court,

and I distinctly repudiated it. I then pointed out how entirely opposed it was to what I was then declaring to be the opinion of this Court. I regret exceedingly therefore that it should have been attributed to me in the High Court; and the more so that in my written judgment I sought to guard against so manifest a misreading of the appeal before us. It clearly appears from my judgment that upon an appeal such as this an alteration in the *totals* would *not* affect the individual ratepayers whose assessments had been impugned, otherwise than as members of the general body of the ratepayers. Now, if the "*details*" were "*altered*" (as it was assumed I required),—that is to say, if the impugned assessments (as now appearing in the valuation list) were *altered*, the respective ratepayers would assuredly be thereby affected apart from the rest, each to the extent of the addition made to his assessment—a palpable and monstrous injustice, inasmuch as they are not individually parties to the appeal. I must, therefore, in justice to myself be permitted to repudiate such a notion. Moreover, with great respect to that most learned judge, Mr. Justice A. L. Smith, I crave leave to refer to a further misconception in the above literal quotation from his judgment. The question before us was *not*, as would appear therefrom, as to altering the total from 11,345*l.* to 6,240*l.*,—those extracted figures, in point of fact, merely showing the difference between the original contention by the appellants and their *present* view, with regard to the proper addition to be made to the actual total in the valuation list. The fact that the appellants had *reduced* their demand for an addition to the total was quite immaterial to the question before us, so that here again there was unfortunately a misapprehension of what this Court required. Totals, be it understood, are the last figures in a valuation list; the "*details*" are the separate previously entered assessments constituting those totals—the respective amounts on which the rates are levied; and it never was the purpose of this Court to *alter* those *details*, or to *alter any details* appearing

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in the list. The assessment against each occupier's name would stand precisely as it does. But something more than a mere naked addition to the totals would quite consist therewith. We certainly did think, and I deemed it right to say, that where *non*-assessments as well as *under* assessments were complained of, the amount sought to be added at the foot of the valuation list should be allocated under the particular head or heads applicable; and we further thought—erroneously, I regret to say,—that inasmuch as the statute empowers this Court to alter or confirm the valuation list, so far as it is questioned by the appeal, *in such manner as it may think just*, we might reasonably and justifiably ask the litigant parties for these particulars. I should not have ventured to make these observations but for the misconceptions to which I have referred. I may add that the legal obligation upon this Court to enter without question absolutely unexplained additions to the totals in the valuation lists is a matter closely affecting every ratepayer in the metropolis. It is an indisputable fact that by the operation of the Valuation (Metropolis) Act, London has been assessed for house duty, &c., on a much higher basis than the country generally, and so has had to contribute disproportionately to imperial taxation. We have before us an appeal requiring the addition of nearly a quarter of a million sterling to the total in the valuation list of a union—indeed there are several other appeals for a similar purpose, and it is open to every individual ratepayer in the metropolis to send us such appeals: and if this be the obligation upon the Court, there is nothing to prevent such an addition, or a much larger addition, to parish liabilities being made by agreement between the litigants—as the easiest method of solving differences and terminating litigation. At the same time I must express regret for the error into which I fell in drawing a distinction between the present agreement and one that might be made between A. and B., private suitors, in respect of some purely personal dispute. The entirely unexplained

new total will be entered in obedience to what I understand to be the command of the High Court, adjudicating what would be "just" in this case; but we regret to say, with no sub-division of the amount in the manner indicated by the evidence of Mr. Chadwick.

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EX PARTE THE WANDSWORTH AND CLAPHAM UNION.

1891.
March 20.

Totals—Alteration of Individual Assessments.

Whether the totals in the valuation list can be altered in consequence of decisions on appeals relating to individual assessments, and if so, by whom must the alterations be made, *quære*.

Where no appeal against totals had been entered, and appeals relating to individual assessments were still pending, the sessions refused to make any alteration in the totals to correspond with alterations already made on appeals relating to individual assessments.

APPLICATION *ex parte* for an alteration of the totals in the valuation list, in consequence of the alterations of several items making up those totals, on appeals relating to individual hereditaments.

G. E. Lyon in support of the application: Several appeals relating to individual hereditaments in the Wandsworth and Clapham Union have been already decided by this Court, involving large reductions of gross and rateable values. Consequently, the totals originally entered in the valuation list are now too high by a large amount. Notwithstanding this, the London County Council claim the right to levy a rate based upon the incorrect totals, and refuse to recognize any alteration in the total in consequence of an alteration in the items, alleging that an alteration of the total is valid only when initialled by the chairman of quarter sessions under s. 34 of the Valuation (Metropolis) Act, 1869, which provides that "The clerk of the assessment committee, or some

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deputy allowed by the assessment committee, shall attend the Court with the valuation list to which the appeal relates, and any alteration shall be made by the justice acting as chairman of the sessions in that list, and the said justice shall place his initials against such alteration." There are other appeals relating to individual assessments in the union still pending. There is no appeal entered against the totals in the valuation lists for the several parishes. [Sir P. H. EDLIN: Has not the alteration of the totals been hitherto regarded as the duty of the assessment committee?] Before the creation of the London County Council, the duties connected with the printing, &c., of the totals, were performed by the clerk of the managers of the Metropolitan Asylum District; and it was the invariable practice of the clerk of the managers to make alterations from time to time in the totals to correspond with the alterations of individual assessments, on notice being given them of such alterations, and rates were always levied on the totals as so altered. In 1871 (*i.e.*, at the first session held after the passing of the Valuation (Metropolis) Act, 1869), the assessment sessions made an order, on the application of the parish of St. Andrew's, Holborn, for an alteration of the totals in consequence of alterations made on appeals as to individual assessments: see *Met. Rat. App.* 30.

The Court refused to make any order upon this application (*a*).

(*a*) See the next case, and the decision of the Queen's Bench Division in *E. v. Guardians of Woolwich Union*, *infra*, p. 279. See also *Vestry of St. Pancras v. Assessment Committee of St. Pancras*, *infra*, p. 233. The Valuation (Metropolis) Act, 1869, s. 41, is as follows: "Notice of every alteration in the valuation list, which alteration is made in consequence of any decision on any appeal to the special sessions, assessment sessions, or a superior Court, shall, as soon as possible, be sent in writing by the clerk of the assessment committee to the overseers and surveyor of taxes of the parish and district respectively to which the list which is so altered relates, and such alteration shall be entered by the clerk of the assessment committee and by the overseers on the duplicates respectively deposited with them."

"Notice of every alteration in the total of the gross and rateable value

EX PARTE THE ASSESSMENT COMMITTEE OF THE
WOOLWICH UNION.

1891.
June 19.

Totals—Alteration of Individual Assessments.

Where no appeal against totals had been entered, the sessions refused to make any alteration in the totals to correspond with alterations already made on appeals relating to individual assessments, even in the case of a parish in which all appeals, which had been entered in respect of individual assessments, had been finally determined.

APPLICATION made by the assessment committee of the Woolwich Union, that the totals in the valuation lists for the several parishes in the union might be altered, in consequence of alterations made on appeals relating to individual assessments in those lists, so as to make the totals arithmetically correct: and that the initials of the chairman of quarter sessions might be placed against such alterations, in accordance with s. 34 of the Valuation (Metropolis) Act, 1869.

No appeal against the totals of the several parishes had been entered.

It was stated that notice of this application had been given to the London County Council, but they did not appear to oppose or support it.

Sinclair Cox in support of the motion: There are four parishes in the Woolwich Union, and in three of them all appeals relating to individual assessments have been decided.

of any valuation list, which alteration is made in consequence of any decision on any appeal to the assessment sessions or a superior Court, shall, as soon as possible, be sent in writing by the clerk of the assessment committee to the clerk of the managers of the Metropolitan Asylum District, and the clerk of such managers shall send in writing such altered total to every person and body of persons who has power to levy or make any rate or assessment or require any contribution based on such total."

There seems to be a difficulty in reconciling the first clause of this section, which directs the alteration of the two duplicates of the valuation list by the assessment committee and overseers respectively, with s. 34 (set out above), which directs the alteration of one duplicate by the chairman of the sessions.

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In one parish (Woolwich) there is an appeal still pending : See *London County Council v. Woolwich Union*, *infra*, p. 126. [Sir P. H. EDLIN : How many times are we to alter the totals? As often as we alter any of the details?] The clerk of the assessment committee has made the necessary alterations in the totals (in consequence of the alteration of the details), as directed by s. 41 of the Valuation (Metropolis) Act, 1869 [the section is set out in a note, *supra* p. 94]. The alteration of the figures in the duplicate copies of the valuation list is a merely ministerial duty. The London County Council refuse to recognize any alterations against which the initials of the chairman of quarter sessions are not placed, in manner directed by s. 34 : and they further say that there is no power to alter totals except on an appeal against totals. No notice of appeal against totals has been given in any parish in the Woolwich Union [Sir P. H. EDLIN : By s. 34 of the Valuation (Metropolis) Act, 1869, "if from accident or mistake due notice of appeal has not been given, or if an additional notice of appeal appears to be required," the sessions "may, if they think it just, order notice of appeal to be given"]. A successful appellant does not obtain the full benefit of the reduction granted unless the totals are altered in accordance with the alteration of his individual assessment ; and if an appeal against totals is necessary before the totals can be altered, then every appellant must add an appeal against totals to his appeal against his own assessment.

The CHAIRMAN (Sir P. H. Edlin, Q.C.) : I do not think you are *rectus in curiâ* in present. Before I make any order on this matter, I should desire to hear what the London County Council say, and I think they ought to instruct counsel to appear.

Motion dismissed (a).

(a) For the decision of the Queen's Bench Division upon the question here raised, see *R. v. Guardians of Woolwich Union*, *infra*, p. 279. See also *Ex parte Wandsworth and Clapham Union*, *supra*, p. 93 ; and *Vestry of St. Pancras v. Assessment Committee of St. Pancras*, *infra*, p. 233.

WOODWELL v. ST. SAVIOUR'S UNION.

1891.
March 20.*Practice—Objection before Assessment Committee—Condition precedent to Appeal.*

By s. 32 of the Valuation (Metropolis) Act, 1869, "Any ratepayer . . . who may feel aggrieved by any decision of the assessment committee, on an objection made before them to which he was a party . . . may appeal" to the quarter sessions.

Held, that the making of an objection before the assessment committee was a condition precedent to the right of appeal under this clause: but that, although the sessions had no jurisdiction to hear the appeal, they had jurisdiction to give the respondents their costs.

APPEAL decided on a preliminary objection.

G. E. Lyon (*G. Elliott* with him), for the respondents: This is an appeal by a ratepayer, and therefore he must be able to show that he is "aggrieved by a decision of the assessment committee on an objection made before them to which he was a party": see s. 32 of the Valuation (Metropolis) Act, 1869. The making of an objection before the assessment committee is a condition precedent to the right of appeal. There has been no such objection by the appellant. The respondents' case raises the point now taken.

Besley for the appellant: An objection to the assessment was made before the overseers by mistake, the appellant supposing that he was appearing before the assessment committee. An adjournment is asked for to enable the appellant now to make an objection before the assessment committee. The appellant is willing to pay the costs of the day.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We cannot hear the appeal, and it is dismissed with costs. It has been held that quarter sessions may have power to make

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 WOODWELL to hear an appeal on the merits (a).
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1891. LONDON COUNTY COUNCIL v. GREENWICH UNION.
 May 7.

*Lodge on Blackheath—Occupation by County Council for Public
 Purposes—Exemption from Rateability.*

By the Plumstead Common Act, 1878 (41 & 42 Vict. c. clxv.), the Metropolitan Board of Works (in whom the control of Blackheath was already vested by statute) were empowered “to erect and maintain . . . upon Blackheath . . . a suitable lodge for the accommodation of any officer appointed by them to preserve order upon the Heath, and for its protection.”

By the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8) the London County Council became in law the successors of the Metropolitan Board of Works.

Under the Act of 1878, a lodge was erected and a keeper was appointed to reside there, who was paid by the appellants, a sum of four shillings per week being deducted from his wages for rent of the lodge, which was rated at 30% gross and 24% rateable value. The appellants did all the repairs. The total average annual expenditure on the maintenance of Blackheath was about 700%.

By a local Act (9 Geo. 4, c. xliii.) the owners of houses let at a rent payable at periods shorter than quarterly are to be deemed the occupiers, and are to be rated for the same.

Held, that as the lodge was occupied solely for the purpose of keeping order on Blackheath, the appellants were not liable to be rated in respect thereof.

APPEAL against an assessment of 30% gross and 24% rateable, in respect of the lodge occupied by the head-keeper of Blackheath, whose duty it was to keep order on the common. The lodge was vested in the London County Council, as the successors of the Metropolitan Board of

(a) The learned Chairman was apparently referring to *R. v. Padwick* [1858], 27 L. J. M. C. 113, which was decided on 12 & 13 Vict. c. 45, ss. 5, 6. Compare also *Great Northern, &c. Committee v. Inett* [1877], 2 Q. B. D. 284; and *Diss Urban Sanitary Authority v. Aldrich*, *ib.* pp. 179, 285.

Works (under s. 40 of the Local Government Act, 1888), and a rent of four shillings a week was deducted from the wages paid to the head keeper by the County Council. The lodge contained no more than the necessary accommodation for the keeper and his family. The repairs were done by the London County Council, and were included in the general accounts of the maintenance of the common, which amounted on the average to about 700*l.* a year.

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No objection was taken to the amount of the assessment.

H. E. Avory for the appellants: The lodge is not rateable, and the present case is concluded by *London County Council v. Wandsworth and Clapham Union*, Ryde's Rat. App. (1886—1890) 220, where the London Quarter Sessions held that the lake in Battersea Park was not rateable, although the County Council were in receipt of an annual payment of 275*l.*, made in consideration of the exclusive privilege of letting out boats on the lake for hire. Blackheath is a common within the metropolitan police district, and as such is governed by the Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122); see s. 4. By s. 6, "A scheme for the establishment of local management with a view to the expenditure of money on the drainage, levelling, and improvement of a metropolitan common, and to the making of bye-laws and regulations for the prevention of nuisances, and the preservation of order thereon, may be made under this Act": by s. 8 the Inclosure Commissioners may prepare a draft scheme, which, by s. 22, is to be confirmed by parliament. A scheme relating to Blackheath was prepared under this Act, and was confirmed by the Metropolitan Commons Supplemental Act, 1871 (34 & 35 Vict. c. lvii.).

The Plumstead Common Act, 1878 (41 & 42 Vict. c. cxlv.), in the preamble recites (*inter alia*) that "Blackheath is now under the control of the Board" (*i. e.*, the Metropolitan Board of Works), and that "it is expedient that the Board should have power to erect a lodge on

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Blackheath for the accommodation of any officer employed by them for preserving order amongst persons frequenting the heath, and for its protection :” and “that the objects aforesaid cannot be attained without the authority of parliament;” and, by sect. 22, “The Board may erect and maintain, upon such part of Blackheath as may be agreed upon between them and the lord of the manor, or as, in case of difference, shall be settled by the Secretary of State, a suitable lodge for the accommodation of any officer appointed by them to preserve order upon the heath, and for its protection.” The lodge now in question has been erected under these powers, and is part of the common for which the appellants cannot be rated. The head-keeper is a constable, and holds a warrant, and it is his duty to arrest persons infringing the bye-laws. The lodge is occupied, therefore, solely for the discharge of the public duty, cast upon the appellants, of keeping order on the common; the lodge cannot, for rating purposes, be severed from the common; and even if it can, there is no beneficial occupation.

This case is governed by *Lancashire Justices v. Overseers of Stretford* [1858], E. B. & E. 225; 27 L. J. M. C. 209: in that case county justices provided, for a police district of their county, buildings which consisted of premises used exclusively for the police offices, cells, and rooms for the residence and accommodation of the police sergeant and constables, who resided there (one of them with his wife), and had a deduction made from their wages in respect of the rent, but they enjoyed no accommodation more than was necessary for their convenient occupation in their official capacity, and for the purposes for which they were placed there. It was held that the buildings were occupied exclusively for public purposes, and the justices were not rateable in respect thereof. In the present case, if the Court hold that there is a rateable occupation, it is submitted that the lodge-keeper, and not the County Council, is the occupier.

E. U. Bullen for the respondents: As to the last point taken for the appellants, the owners and not the occupiers of the lodge are rateable, because by a local Act (9 Geo. 4, c. xliii. s. 26), "The owner or owners, landlord or landlords, of any house, building, land, tenement or hereditament within the said parish [of Greenwich], the rent or yearly value of which house, &c., shall not exceed 15*l.*, or which, whatever the yearly rent or value may be, shall be let to weekly or monthly tenants, and which house or building shall be let furnished, or in lodgings or separate apartments, or which house, building, land, tenement, or hereditament shall be let at a rent which shall become or be made payable at periods shorter than quarterly, shall be deemed to be the occupier of such house, &c., and shall and may be rated for the same accordingly." As to the general question, the exemption from rateability which attaches to police stations and buildings occupied for similar purposes, is the exemption of the Crown, and this exemption cannot be claimed by the London County Council. In *Old Windsor v. Matthews* [1777], Cald. p. 1, the keeper, appointed by the ranger of Windsor Park, was held rateable for a lodge and two acres of land which he occupied, on the ground that where a servant of the Crown becomes beneficially possessed of property, he is rateable for it as occupier, and it is immaterial whether he pays for it by rent or by services. In the present case, the occupation of the lodge by the head-keeper is beneficial to him, and therefore the appellants, by virtue of the local Act, are rateable as owners in respect of that beneficial occupation. [Sir P. H. EDLIN: The appellants do not rely on the exemption of the Crown, but upon the fact that the property is used exclusively for public purposes.] Except where the occupation is by those who are servants, or quasi-servants, of the Crown, user for public purposes is no ground of exemption, since the decision in the *Mersey Docks Cases* [1865], 11 H. L. C. 443. Lord Cranworth said (*Ib.* at p. 508): "The Crown not being named, is not bound by the Act [43 Eliz. c. 2]. It follows, there-

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fore, that lands or houses occupied by the Crown or by servants of the Crown for the purposes of the Crown are not liable to be rated, and I conceive that it is from a confusion between property occupied for public purposes, and property occupied by servants of the Crown, that this mistake has arisen. This principle exempts from rates not only royal palaces, but also the offices of the Secretaries of State, the Horse Guards, the Post Office, and many similar buildings. On the same ground, police courts, county courts, and even county buildings occupied as lodgings at the assizes for the judges have been held exempt. These decisions, however, have all gone on the ground, more or less sound, that these might all be treated as buildings occupied by servants of the Crown, and for the Crown, extending in some instances the shield of the Crown to what might more fitly be described as the public government of the country." The principle laid down in *Lancashire Justices v. Overseers of Stretford* [1858], E. B. & E. 225, is no longer law since the *Mersey Docks Cases*. In *Durham County Council v. Chester-le-Street*, [1891] 1 Q. B. 330; *infra*, p. 267, it was held that a county council are rateable in respect of an industrial school, established by justices under the Industrial Schools Acts, 1866 and 1872, and vested in the county council under the Local Government Act, 1888. Day, J., said (*infra*, p. 275): "There is no ground whatever for saying that the county council are the servants of the Crown." In *Showers v. Chelmsford Union*, [1891] 1 Q. B. 339; *infra*, p. 259, the residences provided for the chief constable and other officers of the police force of the county of Essex (the rent of his premises being deducted from the pay of each officer), were held rateable. That case followed *Martin v. West Derby Union* [1883], 11 Q. B. D. 145. In *Tunnicliffe v. Overseers of Birkdale*, Ryde's Rat. App. (1886—90), 286, the Court of Appeal held that the managers of a reformatory school do not occupy the school as servants of the Crown, and are therefore liable to be rated in respect thereof. It was there pointed out that the exemption

attaches only where, if any person were rated, the Crown would have to pay the rate. The exemption arises from the inability to make the Crown pay. [Sir P. H. EDLIN : In the cases cited, there were land and buildings which would otherwise have been rated, apart from the actual occupation at the time ; here the soil is vested in the lord of the manor, subject to the right of the public to roam over it ; and, but for the special Acts, this lodge could not have been built.] The exemption cannot extend to all buildings used for public purposes, because a school board has been held rateable : see *R. v. School Board for London, Ryde's Rat. App.* (1886—90), 235 ; 17 Q. B. D. 738. The present case is distinguishable from *London County Council v. Wandsworth and Clapham Union*, *Ryde's Rat. App.* (1886—90), 220, for there the lake was included in and formed part of Battersea Park, which was an inclosed area ; here the lodge forms no part of the open and uninclosed common.

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The CHAIRMAN (Sir P. H. Edlin, Q.C.) : The Court is against you, Mr. Bullen ; but if, after consideration, you think it worth while, we will grant you a case for the opinion of the Queen's Bench Division. On a careful review of all the circumstances, we think that this lodge is within the exemption, because it is occupied by a person whose exclusive duty it is, under the statutes, to look after, and keep order on, the common. We come to this conclusion quite apart from the question whether it is possible to sever the occupation of the house from the general expenses incurred in connection with the common. Notwithstanding the local Act (9 Geo. 4, c. xliii.), we do not think the County Council can be regarded as in beneficial occupation of the lodge. We must erase the entry from the valuation list (a).

Appeal allowed.

(a) No application was made by the respondents for a case for the opinion of the Queen's Bench Division.

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LONDON COUNTY COUNCIL *v.* THE LEWISHAM UNION
ASSESSMENT COMMITTEE AND THE COMMISSIONERS OF
PUBLIC BATHS AND WASH-HOUSES FOR THE PARISH OF
LEWISHAM.

*Public Baths—Occupation in Discharge of Statutory Duty—Absence
of Profit—Rate of Interest on Cost.*

The Commissioners of Public Baths and Wash-houses for the Parish of Lewisham, in the discharge of statutory duties, bought land and erected thereon buildings to be used as public baths, at a total cost of about 13,000*l.* The baths were assessed at 125*l.* rateable value. They were carried on at a loss. Some of the charges which could be made for the use of them were restricted by statute. The respondents' witness stated that a tenant who was free from the statutory restrictions could not be found to give more than 275*l.* a year under a lease; the appellants' witness thought that such a tenant would give 500*l.* a year.

Held, that the rateable value must be increased to 275*l.*

The commissioners were able to borrow from the London County Council at 3½ per cent.

Whether, in taking cost of the land and buildings as evidence of rateable value, it was permissible to calculate any higher interest thereon than 3½ per cent., *quære*.

Semble, in estimating the rateable value of public baths the sessions disregarded the cost of land and buildings.

APPEAL relating to the public baths, Dartmouth Road, in the parish of Lewisham, by the London County Council, as ratepayers in respect of the fire brigade station and other premises in the same parish.

The overseers assessed the premises at 60*l.* gross and 50*l.* rateable value; on objection being made by the London County Council, the assessment committee raised the assessment to 150*l.* gross and 125*l.* rateable value. Against this decision the County Council appealed, contending for a further increase to 654*l.* gross and 545*l.* rateable value.

The material sections of the Public Baths and Wash-houses Act, 1846 (9 & 10 Vict. c. 74), are as follows:—

By s. 5, a resolution for the adoption of the Act in a

particular parish may be passed at a specially convened vestry meeting; and by s. 6, the vestry may appoint commissioners for carrying the Act into execution.

By s. 16, the expenses of executing the Act are to be paid out of the poor rate; and by s. 17, the overseers are to levy, as part of the poor rate, such sums as the vestry deem necessary to pay the expenses.

By s. 18, any balance (after repayment of moneys borrowed) of money raised for defraying expenses, and of income arising from the baths, is to be paid to the overseers in aid of the poor rate.

By s. 24, the commissioners "may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act"; and by s. 27, they may "contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided."

By s. 31 the commissioners (with the approval of the vestry, and of the Treasury) "may from time to time make sale and dispose of any lands vested . . . in the commissioners for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, . . . and the commissioners may convey the lands so sold or exchanged accordingly."

By s. 32, "Whenever any public baths or wash-houses or open bathing-places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the vestry in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the commissioners (with the approval of the Treasury) may sell the same for the best price that can reasonably be obtained for the same, and the . . . commissioners shall convey the

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same accordingly . . . and the net proceeds of such sale shall be paid to the credit of" the poor rate.

By s. 7 of 10 & 11 Vict. c. 61, charges for the use of baths, wash-houses, and open bathing places may not exceed the rates mentioned in the schedule to that Act.

By s. 5 of the Baths and Wash-houses Act, 1878 (41 & 42 Vict. c. 14), the commissioners have power to close a swimming bath for a limited period in the winter months, and "may establish therein a gymnasium or such other means of healthful recreation as they shall think fit, or may during such period allow any swimming bath to be used as an empty building for such purposes of healthful recreation or exercise as they shall think fit during such period as aforesaid, and may at any time allow any portion of the public baths not required by the commissioners to be used for holding vestry meetings or other parochial purposes; provided always that no swimming bath when closed may be used for music or dancing."

By s. 4 of the Act of 1878, charges may be made for the use of covered swimming baths, not exceeding the rates specified in the schedule to the Act; and, by s. 8, the commissioners may "make such reasonable charges for the use of the gymnasium or other means of recreation established under this Act, or for the use of any covered swimming bath as an empty room, as they shall think fit."

The baths, the subject of this appeal, were established in 1885, and the respondents in their case alleged that the receipts (on the average of five years ending March 25, 1890) had been inadequate to pay the expenses, apart from the interest on the mortgage debt, and that the commissioners had received large contributions from the rates to meet the deficit in respect of the expenses, and of the interest on the mortgage debt. The respondents contended that since the establishment of the baths in 1885, "it would have been impossible for a tenant occupying them, with the restrictions as to charges imposed by s. 7 of 10 & 11 Vict. c. 61, to have made any profit whatsoever": and

they further contended that the assessment fixed by the assessment committee "either represents or is in excess of the annual rent which a tenant from year to year, even if unfettered as to user and unrestricted as to charges would give if the premises were in the market" (a).

In the accounts of the commissioners, the "land and structure" were put down as having cost 13,801*l*. It was not suggested that there had been any needless or extravagant outlay, or that equally suitable premises could have been erected on a cheaper site.

H. E. Ivory for the appellants: As ratepayers in respect of the fire brigade station in this parish, the London County Council asked for, and obtained, a gross value calculated at 4 per cent. and 5 per cent. respectively, on the cost of land and buildings. They now ask that the gross value of these baths should be calculated on the same principle. The absence of profit is immaterial, since *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235; 17 Q. B. D. 738. The baths are used in the winter months for concerts, &c.; as to this user, the commissioners are under no restriction as to charges.

The following evidence was given for the appellants:—*Mr. Spencer Chadwick* said there was half an acre of land which was said to have cost 607*l*.: taking 4 per cent. on this sum and adding it to 5 per cent. on the estimated cost of the buildings (12,185*l*.), he arrived at a total of 633*l*., which he put as the gross value; although he submitted that, according to the practice of the Court, this sum should have been taken as the rateable value. From the gross the witness deducted one-sixth, leaving a rateable value of 528*l*. The buildings were constructed for, and were suitable to, the purposes for which they were used.

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(a) It will be found that this latter contention of the respondents is based on the rule laid down by the Queen's Bench Division in dealing with (*inter alia*) baths and wash-houses, in *Overseers of Chorlton-upon-Medlock v. Guardians of Chorlton Union* [1882], 51 L. J. Q. B. 458.

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A tenant who was under no restriction as to charges for the use as baths and for concerts, could be found to give 500% a year for these premises. The witness said that baths were actually carried on, in London, at a profit, even with charges as low as those made in the Lewisham baths.

Mr. Andrew Young, the valuer of the London County Council, valued the premises at 659% gross, and 550% rateable value, applying the same percentages which Mr. Chadwick adopted, to almost identical figures. The witness stated that the commissioners could borrow money from the London County Council at $3\frac{1}{2}$ per cent.

Evidence as to the principle acted upon by the assessment committee in valuing other premises was tendered, but was objected to by the respondents and disallowed.

Poland, Q.C. (T. T. Paine with him), for the respondents: It is not contended that the baths must be rated as if the appellants were prohibited from making a profit. There is no restriction on the charges which may be made, while the baths are used for the purposes permitted by the Baths and Wash-houses Act, 1878; but although the baths have been used for those purposes, there is still *de facto* a loss. Had there been a large profit, no doubt the assessment would have been based on that profit. The commissioners are bound to carry on the baths for seven years; and though at the end of that time they can close the baths, they cannot do so till then: see s. 32 of 9 & 10 Vict. c. 74 (*supra*, p. 105). The commissioners must, therefore, be excluded from consideration as possible hypothetical tenants, for they are in the same position as the appellants in *Owens College v. Chorlton-upon-Medlock*, Ryde's Rat. App. (1886—1890) 256: Lord Esher, M.R., there said (at p. 265): "We must bear in mind that the appellants are a corporation created by statute, and have, therefore, only the powers given them by statute. It seems to me that, looking at the provisions of the statutes, it is a necessary

implication that the appellants cannot become tenants of those premises, of which, by statute, they are made the owners, and which they cannot sell, let, or dispose of. It seems to me that the appellants cannot be taken into account as possible hypothetical tenants; because it is impossible to ask what persons would give as tenants, when *ex hypothesi* they cannot be tenants." And Bowen, L.J., said (*Ib.*, at p. 266): "The land and buildings in question have been purchased by the appellants, and are vested in them. I do not think we need consider whether they originally had power to rent a site; they have, in fact, bought one, and can neither sell it nor let it, but must continue to occupy it for their statutory purposes. . . . They must be excluded from a list of persons willing to give a rent, because, as matters now stand, they cannot ever become tenants of the site of these buildings. . . . We must, therefore, consider what other possible tenants would give for these premises; and we must assume that those tenants are fettered by the same restrictions as are imposed upon the appellants by the Acts of Parliament." The last sentence cited is inconsistent with the principle adopted by the Queen's Bench Division in *Overseers of Chorlton-upon-Medlock v. Guardians of Chorlton Union* [1882], 51 L. J. Q. B. 458; it was there held that in rating baths and laundries, board schools, and other buildings of a like character, the true measure of rateable value was "the rent which a tenant, unfettered as to user, and unrestricted as to charges, would give if the premises were in the market." No tenant of the Lewisham Baths, taking them as fettered by the Acts relating thereto, could make a profit. In *R. v. School Board for London*, Ryde's Rat. App. (1886—1890) 235; 17 Q. B. D. 738, it was held that interest on cost of construction was evidence only, and not the conclusive criterion of rateable value: and when that case was before the Queen's Bench Division, it was said that "interest on cost is a rough test undoubtedly. It is a test in some cases, but it is not a test in others":

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vide per Cave, J., 55 L. J. M. C. at p. 37. In the present case, assuming that cost is evidence of rateable value, it cannot be right to take 4 per cent. on the price of the land and 5 per cent. on the cost of the buildings, when the commissioners can borrow money from the London County Council at $3\frac{1}{2}$ per cent. (a). They would not, therefore, pay to a contractor any higher percentage than $3\frac{1}{2}$ per cent. on the total cost.

The clerk to the commissioners having proved that the accounts showed a loss, the respondents called one surveyor only, Mr. W. J. Dyer, who stated that if the baths were in the market, without any statutory restriction as to charges, a tenant could not be found to give more than 275*l.* a year under a lease.

H. E. Avory for the appellants, in reply: The *Owens College Case*, Ryde's Rat. App. (1886—1890) 256, has no application: that decision rested entirely on the provisions of the special Acts, which prohibited the then appellants from ever being tenants of their freehold property: in the present case, by s. 24 of 9 & 10 Vict. c. 74 (set out *supra*, p. 105), the commissioners may "contract for the purchasing or renting of any lands necessary"; by s. 27, they may purchase or lease existing baths, &c.; and, by s. 31, they may "from time to time make sale and dispose of any lands"; and, by s. 2, "lands" means "lands, tenements, and hereditaments, of whatsoever nature or tenure." The fact that the commissioners have in fact bought this site is immaterial; if they might (had they chosen) have

(a) It seems to have escaped the attention of counsel and of the Court that the suggestion here made is not strictly accurate. The appellants' witnesses took 4 per cent. on the cost of the land, added to 5 per cent. on the cost of the buildings, as representing the *gross* value, and made a deduction of one-sixth on the whole in order to arrive at the rateable value, which was, therefore, equivalent to $3\frac{1}{2}$ per cent. on the cost of the land, plus $4\frac{1}{2}$ on the cost of the buildings. It is obvious that whatever rate of interest the commissioners had to pay on money borrowed for the construction of the baths, they would have to pay, *in addition*, the annual cost of repairs: the interest, therefore, represents rateable and not gross value.

become tenants: see the explanation of the *Owens College Case*, in the *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, Ryde's Rat. App. (1886—1890), at pp. 319, 324. A statutory duty to keep open these baths is laid upon the commissioners, similar to the statutory duty to keep open a school in *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235, and that case governs this. If it was worth while to spend about 13,000*l.*, that fact is some evidence of value to the commissioners. The witnesses on both sides agree that a private person could be found as a tenant, and the respondents' own witness says that such a tenant would give 275*l.* a year. Perhaps the commissioners would give much more than that, and they, being the actual occupiers, must be taken into account as possible hypothetical tenants.

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The CHAIRMAN (Sir P. H. Edlin, Q.C.): Considering the relative position of the parties to this appeal, we think that further litigation is to be deprecated. We think that there should be an increase, but not so large as the appellants have contended for. We raise the assessment to 330*l.* gross and 275*l.* rateable value; there will be no order as to costs (*a*).

Appeal allowed.

(*a*) It seems (from an examination of the figures) that the sessions disregarded interest on the cost of land and buildings. The question as to the rate of interest was raised again in *London County Council v. Woolwich Union*, *infra*, p. 126; and cf. *Westminster Union v. Wandsworth and Clapham Union*, *supra*, p. 31.

It should be noticed that the *Owens College Case*, cited in the argument of the case above reported, has since been overruled by the House of Lords: *vide infra*, p. 382.



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June 15.

LONDON, CHATHAM AND DOVER RAILWAY COMPANY *v.*
ST. SAVIOUR'S UNION.

Practice—Appointment of Valuer—Valuation (Metropolis) Act, 1869,
s. 36.

It is for the sessions, and not for the parties to the appeal, to nominate the valuer appointed under s. 36 of the Valuation (Metropolis) Act, 1869.

APPLICATION by consent of the parties in three appeals which were to be heard together for the appointment of a valuer under s. 36 of the Valuation (Metropolis) Act, 1869, which provides that, "If any of the parties to the appeal apply to the justices in [quarter] sessions to direct a valuation of any hereditament with respect to which any appeal may be made, and if such applicant or applicants give such security as the Court think proper, to pay the costs of the valuation, the Court may, in their discretion, appoint some proper person to make such valuation."

Freeman for the appellants: The Court are asked to select a valuer from those whose names are now submitted to the Court.

Fullarton, Q.C., for the respondents: It is also asked that the parties have leave to appear before the valuer by counsel, and to call witnesses. It may be that costs would not be allowed unless this were included in the order of the Court.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): It is better to leave the appointment to the Court. We should communicate with the parties before making it. A valuer appointed under s. 36 is not like an arbitrator, the nominee of the parties.

The order asked for (as to the appearance before the valuer, &c.) was directed to be drawn up, with a recital that it was made "by the consent of the parties to the appeal"; and it was further ordered that the parties should join in giving security for 500*l.* for the costs of the three appeals.

MERCIA v. LEWISHAM UNION.

1891.
June 18.

*Practice—Time—Abandonment of Appeal—Costs—Notice of Intention
to appear as Respondents.*

An appeal to quarter sessions was entered after January 14, the date fixed by O. 5, 1890. On January 24 the appellant gave to the respondents notice of the abandonment of the appeal. The respondents gave to the appellant no notice of their intention to appear as respondents. On March 26 the appeal was struck out without notice to the respondents. On June 18 the respondents moved for a reinstatement of the appeal, and for an order giving them their costs down to the date of abandonment.

Held, that the respondents were entitled to the costs asked for, but that the motion should be, in addition, for an order that the appeal be entered.

MOTION for an order “that the appeal herein which has been struck out by mistake be reinstated, and that the costs incurred by the respondents in the matter of the said appeal down to the withdrawal thereof, and the costs of and incidental to the motion, be paid by the appellant to the respondents.”

The question arose out of the following facts; the appeal was entered after January 14, 1891, and was entered at the foot of the printed list of appeals issued by the Clerk of the Court, under the heading “Petitions lodged after the 14th January.” The appellant did not enter into recognizances or make any deposit by way of security for costs; and on January 24, 1891, gave notice of abandonment of the appeal to the respondents and to the Clerk of the Court. On March 26 the appeal was said to have been struck out (a); but this was done without notice to the respondents.

By O. 2, 1890, on an appeal to quarter sessions the appellant “shall within seven days after giving notice of appeal

(a) The Editor finds in his notes no report of any such order being made in open Court on the application of either of the parties to the appeal.

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enter into recognizances conditioned for the due prosecution of the appeal, and for the payment of any costs ordered to be paid by the appellant."

By O. 3, 1890, where recognizances have not been entered into, "the Court may, if it sees fit so to do, waive all or any of such recognizances, and proceed to hear the appeal notwithstanding such omission."

By O. 5, 1890, "Appeals to quarter sessions shall be entered by petition, to be lodged in duplicate with the clerk of the Court on or before the 14th January, &c."

By O. 6, 1890, "In an appeal to quarter sessions the person or persons claiming to appear as respondents shall give notice in writing of his or their intention so to appear . . . and such notice shall be delivered to the clerk of the Court, and served on the appellant within fourteen days after the time limited by O. 5 for the entry of the appeal, and the person or persons omitting to give such notice shall not be heard unless by special leave of the Court, until he or they shall have given such notice or complied with such terms as the Court may think fit to direct or impose."

T. T. Paine for the respondents, in support of the motion: The respondents are entitled to costs *bonâ fide* incurred in preparing their case down to the date of notice of abandonment of the appeal. The respondents had no notice that the appeal was about to be struck out.

Mirams for the appellant: The costs asked for were incurred prematurely. The respondents did not give the appellant notice that they intended to appear, as required by O. 6, 1890.

T. T. Paine in reply: The respondents omitted to give notice, because, before the expiry of the fourteen days allowed for the purpose, they received the appellant's notice of abandonment.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): I think the respondents are entitled to the costs incurred by them in good faith, down to the notice of abandonment; but there has been no motion to enter the appeal. Mr. Paine should amend his motion by asking that for the purpose of that motion the appeal may be entered, so as to make himself *rectus in curiâ*. The appellant must pay the costs asked for, including the costs of this motion. The question of amount will be settled on taxation (a).

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THE COMMITTEE OF VISITORS OF THE MIDDLESEX COUNTY
LUNATIC ASYLUM AT WANDSWORTH v. THE WANDS-
WORTH AND CLAPHAM UNION.

1891.
October 27.

Lunatic Asylum—Hypothetical Tenant—Owner in Occupation—Power to rent Premises—Rateable Value—Interest on Value of Lands and Buildings—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 261, 263.

The appellants were the owners and occupiers of lands and buildings used for a lunatic asylum. By statute it was their duty to provide an asylum, and they had power for that purpose either to purchase lands and buildings, or to take a lease thereof for any term not less than sixty years.

Held, that inasmuch as the appellants had power to be tenants of

(a) A technical objection to the order above reported has been suggested to the Editor, and may be stated as follows:—That the entry of the appeal (not being within the time limited by the statute and the orders made thereunder) was, until the Court granted an extension of time, a nullity; that, consequently, at the date of the notice of abandonment, the appeal was not before the Court at all; and that an appeal cannot be brought before the Court without the consent of the appellant.

In answer to this objection it is submitted that the decision of the Queen's Bench Division in *R. v. Ingall* [1876], Met. Rat. App. 176; 2 Q. B. D. 199, shows that the provisions of the Valuation (Metropolis) Act, 1869, as to time, are directory and not imperative; that the provisions as to time contained in the Orders of the Quarter Sessions made under s. 27 of the Act of 1869 cannot be more binding than the provisions of the Act itself; and that, consequently, the entry of an appeal too late is an irregularity merely, and not a nullity. It may, perhaps, be further suggested that an appellant is estopped from saying that his own act (viz., the entry of the appeal) is a nullity; or, at any rate, that he is estopped after electing to treat that act as valid; and that the giving of a notice of abandonment implies such an election, inasmuch as if the entry be a nullity, abandonment is not necessary, or even possible.

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VISITORS OF MIDDLESEX COUNTY LUNATIC ASYLUM v.	<i>R. v. School Board for London</i> , Ryde's Rat. App. (1886—1890), 235; 17 Q. B. D. 738, followed.
WANDSWORTH AND CLAPHAM UNION.	<i>Owens College v. Overseers of Chorlton-upon-Medlock</i> , Ryde's Rat. App. (1886—1890), 256; 18 Q. B. D. 403, distinguished.
	The sessions, in estimating the rateable value of a county lunatic asylum, received evidence of the capital value of the land and buildings.
	<i>Quære</i> , what is the proper percentage on the value of land and buildings, to be taken as the rateable value, when they are occupied for public purposes by a public body who are able to borrow money at an exceptionally low rate of interest.
	<i>Semble</i> , the sessions, in calculating rateable value, took a lower rate of interest on the value of the buildings than 5 per cent.

APPEAL against an assessment of 11,000*l.* gross and 9,167*l.* rateable, in respect of the "asylum, lodge, and outbuildings" at Wandsworth.

The provisions relating to the purchase of lands and buildings for the purposes of a county lunatic asylum are contained in Part IX., ss. 238—266 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5).

By s. 238, every local authority (which term includes, *inter alia*, a county council), "shall provide and maintain an asylum or asylums for the accommodation of pauper lunatics"; and, by s. 239, "a local authority shall exercise the powers conferred by this Act for providing asylum accommodation by a visiting committee."

By s. 261 (1), "a visiting committee, instead of purchasing any land or buildings which they are authorized to purchase, may take a lease thereof for any term not less than sixty years, at such rent and subject to such covenants as the committee think fit."

(2) "A visiting committee, with the sanction of each local authority for whom they are authorized to act, may hire or take on lease from year to year, or for any term of years, at such rent and subject to such covenants as they think fit, any land or buildings for the employment of the

patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum is inadequate."

By s. 263, "lands and buildings already or to be hereafter purchased or acquired for the purposes of any asylum, and any additional building erected or to be erected thereon, shall, while used for those purposes, be assessed to county, parochial, district, and other rates made after the commencement of this Act, on the same basis and to the same extent as other lands and buildings in the same parish, township, or district."

[Although not material to this case, it may be convenient to state the repealed enactments relating to the rating of county lunatic asylums.

By 16 & 17 Vict. c. 97, s. 35, "No lands or buildings already or to be hereafter purchased or acquired, under the provisions of any former Act or this Act, for the purposes of any asylum (with or without any additional building erected or to be erected thereon), shall, while used for such purposes, be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same were assessed at the time of such purchase or acquisition."

This section was repealed by s. 94 of the Lunacy Acts Amendment Act, 1889 (52 & 53 Vict. c. 41), which Act, by s. 69, annulled the partial exemption of county lunatic asylums; that section was, however, repealed by s. 342 of the Lunacy Act, 1890, and was re-enacted in almost identical terms in s. 263 of that Act, which is set out above.]

The question of law as to the principle of rating to be applied to an asylum was first argued.

Poland, Q.C., and *Danckwerts* for the appellants: It is admitted that the asylum is rateable, but at a nominal sum only. By s. 261 of the Lunacy Act, 1890, the appellants have power to take a lease, but for a term of not less than

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sixty years; they cannot consequently be such a tenant as is contemplated by the Valuation (Metropolis) Act, 1869. The case is therefore governed by *Owens College v. Overseers of Chorlton-upon-Medlock*, Ryde's Rat. App. (1886—1890) 256; 18 Q. B. D. 403, in which it was held that persons who are prevented by statute from becoming tenants must be excluded from consideration as possible tenants (a). The present appellants are so prevented; for the power given by sub-s. (2) of s. 261 to "hire or take on lease from year to year" for certain limited or temporary purposes, amounts to an express prohibition, when read with sub-s. (1), to take land from year to year for the purpose of building an asylum. The question is one of evidence rather than one of legal principle; the appellants cannot by statute give any rent, and therefore evidence of the rent which they would give is inadmissible. The decision in the *Owens College Case* followed the rule laid down by Lord Esher, M.R., in *R. v. School Board for London*, Ryde's Rat. App. (1886—1890) 235; 17 Q. B. D. 738. "No doubt you might exclude from consideration anyone who by statute could never become a tenant." By s. 263 of the Lunacy Act, 1890, land used for an asylum is to be assessed "on the same basis and to the same extent as other lands, &c." It is submitted that to rate an asylum at a nominal sum is no departure from the ordinary principles of rating. In ordinary cases the question is, what is the rent which a tenant from year to year, with a reasonable expectation of continuance, would give. In answering that question the Court must exclude from consideration as possible competitors those who cannot by law become competitors. In *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, Ryde's Rat. App. (1886—1890), 314, the distinction was made that the corporation could be tenants of the sewage farm in question. Further, the premises must be valued as they are,

(a) The *Owens College Case* has now been overruled by the House of Lords; *vide infra*, p. 382.

under the existing circumstances. *Per* Lord Esher, M.R., in *Dewsbury Waterworks Board v. Penistone Union* [1886], 17 Q. B. D. at p. 387, "Where land is occupied by a local authority for public purposes, the land is to be assessed to the poor rate at the rent which a tenant would pay, if subject to the same restrictions as are imposed, and entitled to the same advantages as are conferred upon the local authority."

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G. E. Lyon and *G. Elliott* for the respondents were not called upon to argue.

The CHAIRMAN (Sir P. H. Edlin): The Lunacy Act, 1890, effectually disposes of the point raised as to the exclusion of the committee of visitors from consideration as possible hypothetical tenants. This case is governed by *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235; 17 Q. B. D. 738, and we must regard the actual occupiers as possible tenants. We must then consider all the circumstances affecting the appellants. The restriction against taking a lease for less than sixty years does not apply to the present case, because the appellants are owners: their lands must, therefore, be valued on the same basis as other lands and tenements. We have no doubt that the committee are to be included among the possible hypothetical tenants.

The hearing was then proceeded with, upon the facts and the questions of value.

The appellants occupied about 122 acres of land in all, of which about 96 acres were used as a farm, and were separately rated at 235*l.* gross and 224*l.* rateable value. There was also a superintendent's house and garden separately rated at 150*l.* gross and 125*l.* rateable.

The asylum buildings were begun in 1841, and had since been added to, from time to time, as occasion required. At the date of the appeal they contained accommodation for 1,068 patients.

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The asylum, up to 1888, belonged to the county of Surrey, and in the adjustments of property rendered necessary by the Local Government Act, 1888, and the creation of the county of London, was transferred first to the London County Council and then to the Middlesex County Council.

It was assumed throughout the hearing that the Middlesex County Council were able to borrow money at 3 per cent. interest.

The following evidence was given for the appellants:—

Mr. Spencer Chadwick said the average cost of providing asylum accommodation (including land), calculated on seventeen asylums, was 128% per patient. The witness said that, excluding land, an asylum could be erected with all modern improvements, and therefore better and more economical in cost of maintenance than the present asylum, for 120% a head. This would come to a capital outlay of 128,160% on buildings. He put the land (about twenty-six acres) at 200% an acre, which was its value for rating purposes. It had been bought originally for 150% an acre, and a county authority would not have bought this site if they had to pay the price of building land, which would be as much as 600% or 700% an acre. On the total capital value for land and buildings thus arrived at, Mr. Chadwick took 3 per cent. (or 4,001%) as the rateable value, on the ground that the County Council would not pay a higher percentage than this, inasmuch as they could borrow money at 3 per cent., or even less.

Mr. Edward Ryde estimated the cost of erecting a county asylum at 133% per patient, which figures he arrived at thus:—each patient would require on the average 1,000 cubic feet for sleeping room, and the like space for a living room; to allow for the attendance, he multiplied by two, thus getting a total of 4,000 cubic feet for each patient. Buildings of the character required could be erected for eightpence per cubic foot, including

land, and the capital cost for each patient would thus be 133%, which, at 3 per cent., gave a rateable value of 4% per patient. An asylum with accommodation for 1,068 patients should, therefore, be worth 4,272% rateable value. Something must be deducted from this in the present case, on the ground that the asylum had been built piecemeal, and was, therefore, less convenient.

Evidence was tendered as to the amount set down as the value of the asylum in the apportionment of property made under the Local Government Act, 1888, between the London and Middlesex County Councils.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): Should we not have to look at all the other amounts in the calculation? Both councils may have put too high a value on their own property which they were about to transfer. It would be a very fallacious criterion.

The following evidence was given for the respondents:—

Mr. Charles Barker valued the land occupied by the asylum proper (which he put at twenty-eight acres) at 750% an acre, making a capital value of 21,000%. The capital value of the buildings he put at 188,840%; and taking 4 per cent. on the value of the land, and 5 per cent. on that of the buildings, he arrived at a rateable value of 10,282%, and a gross value of 12,300%. The witness said that building land in the neighbourhood was worth 1,000% an acre.

Sir P. H. EDLIN: We should take a long time to come to the conclusion that a public body, wanting land for an asylum, would go where they would have to pay 1,000% an acre.

Mr. Barker said that he valued as building land the land actually covered with buildings, and the gardens, &c. connected therewith. It appeared that he had, by mistake,

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included the superintendent's house and garden, which were separately rated: the assessment thereon was to be deducted from his valuation.

Mr. R. W. Hedley valued twenty-eight acres of land at 750*l*. (taking the area from Mr. Barker); and the structural value of the buildings at 181,557*l*. Taking 4 per cent. on the value of the land, added to 5 per cent. on that of the buildings, as the rateable value, and adding thereto one-fifth, his estimate was 11,900*l*. gross and 9,917*l*. rateable value.

Mr. R. M. Hiscocks, the assistant to the district surveyor of Wandsworth, valued the land (twenty-eight acres) at 1,000*l*. an acre, and the structural value of the buildings at 198,068*l*. Taking the same percentages as the previous witnesses, he arrived at a gross value of 13,227*l*., and a rateable value of 11,023*l*.

G. E. Lyon for the respondents: Where the value of land and the structural value of buildings is in point at all, in calculating rateable value the ordinary percentage must be taken, as representing what rent a landlord would require. [Sir P. H. EDLIN: Structural value is not the basis of calculating rateable value; it is only a criterion, to be used or not, according to the circumstances of each case.] It is not sought to put it as higher evidence than rent paid under a lease. The Middlesex County Council are not bound to put an asylum on this particular site, but they must provide asylum accommodation. Had they done so by buying land and building a new asylum, the cost of land and buildings would have been some criterion of rateable value. As to the rate of interest: in *School Board for London v. St. Mary, Islington* [1885], Met. Rat. App. 393, 4 per cent. on the value of the land, and 5 per cent. on that of the buildings, were taken by the Court; (see p. 399); and the same, or even higher, percentages were taken in *School Board for London v. St. Giles-in-the-Fields and St. George, Bloomsbury* [1876], *lb.*, at p. 155.

The decision of the sessions upon this point was adopted by the Court of Appeal; see *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235; 17 Q. B. D. 738; although the School Board can, and do, borrow large sums at lower rates of interest. In the *Owens College Case*, Ryde's Rat. App. (1886—1890), at p. 266, it was said by Bowen, L.J., "If there are persons who are bound by statute or otherwise to perform certain duties, and who may reasonably be expected to rent the premises to be rated, it is right that they should be taken into account as competing with other possible tenants." In the present case, any of the local authorities mentioned in the Lunacy Act, 1890, would be willing to take this asylum; therefore they must be taken into account as possible competitors. As to the value of the land: every asylum must necessarily have, for the accommodation of the patients, exercising grounds and gardens for their recreation. These must be within the curtilage; and all land that is covered by buildings, or is within the curtilage, must be rated as building land. In *Wyndham v. St. Mary Abbots*, Ryde's Rat. App. (1886—1890), 97, it was contended that a cricket-ground adjoining a college was not part of the curtilage, and therefore was not to be rated on its value as building land, but the assessment sessions overruled the contention.

Poland, Q.C., in reply: It is assumed that the appellants are rightly considered as possible tenants; the question therefore is, what rent would those tenants give? In *School Board for London v. St. Mary, Islington* [1885], Met. Rat. App., at p. 398, it was argued on behalf of the respondents, that a school board must build their schools in a crowded neighbourhood; there is no such necessity in the case of an asylum. All that is wanted is convenience of access, where travelling expenses will be small. Building land, as such, is not necessary. As to the percentage to be taken, that is a question of fact, not the subject of

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appeal from the sessions : the Court of Appeal, therefore, could not, and, in fact, did not, deal with the decision of the sessions on this point in *R. v. School Board for London, Ryde's Rat. App.* (1886—1890), 235. In *St. Pancras v. School Board for London* [1886], *Ib.*, at p. 169, the assessment sessions took $3\frac{1}{2}$ per cent. on the value of the land, and $4\frac{1}{2}$ per cent. on the cost of the buildings. In *R. v. South Staffordshire Waterworks Co.* [1885], 16 Q. B. D. 359, where the works were larger than the existing requirements of the company, 3 per cent. on structural value was taken to arrive at rateable value. Cost of buildings and value of land must be treated only as elements in the calculation of rateable value; the Court are not asked, nor is it possible, to fix a definite percentage, and so lay down a hard and fast rule. It is unreasonable to suppose that a county council would pay a rent equivalent to 4 per cent. and 5 per cent. on the value of land and buildings respectively, when they can borrow money for the purchase of such land and buildings at 3 per cent. The respondents put this asylum in Class 5 of Schedule III. to the Valuation (Metropolis) Act, 1869:—"Buildings without land which are not liable to inhabited house duty, and are of a gross value of 40% or upwards:" it is submitted that it should have been put in Class 11:—"Rateable hereditaments not included in any of the foregoing classes." [This point was not contested by the respondents.]

The CHAIRMAN (Sir P. H. Edlin): We reduce the assessment to 8,333% gross and 6,250% rateable value, and give the appellants their costs. We put the property in Class 11, and have deducted one-third from the gross value (a).

Appeal allowed.

(a) The Court gave no indication of the way in which they arrived at the figures. It seems, however, clear that they took some lower rate of interest than 5 per cent. on the value of the buildings, if the value of land and buildings was dealt with separately. For the lowest separate estimate for buildings alone (viz., 128,160% at 5 per cent., gives a

ROYAL AGRICULTURAL HALL CO. *v.* ST. MARY, ISLINGTON.1891.
October 28.*Agricultural Hall—Accounts—For what Year to be taken.*

Quære, whether the accounts of a company published after the revision of a list by the assessment committee, and after the entry of the appeal, can be looked at, except by consent of the parties.

APPEAL against an assessment of 5,675*l.* gross and 4,563*l.* rateable value, in the quinquennial list, made in 1890, in respect of the Royal Agricultural Hall.

The previous decisions relating to the rating of this hereditament are reported, Ryde's Rat. App. (1886—1890), 193, 272.

Castle, Q.C. (*Walter C. Ryde* with him), for the appellants: It is proposed to base the calculations of rateable value on an average of three years' accounts.

Poland, Q.C. (*J. V. Austin* with him), for the respondents: The accounts for the year ending January 31st, 1891, should be looked at, and will show an increase in rateable value.

[It will be noticed that the accounts, which the respondents sought to refer to, related to a period not merely subsequent to the decision of the assessment committee, but subsequent also to the entry of the appeal.]

The CHAIRMAN (Sir P. H. Edlin): Can we bring in these accounts without the consent of the appellants? The respondents can show that the business fluctuates.

rateable value of 6,408*l.*, or a higher sum for buildings alone than that fixed by the Court for the whole hereditament. If the twenty-six acres of land be taken at 700*l.* an acre (the value put by one of the appellants' witnesses as building land), and the buildings be put at 140,000*l.*, 3 per cent. on land, plus 4 per cent. on buildings, gives a rateable value of 6,146*l.*, as against 6,250*l.* fixed by the Court. These percentages were expressly taken by the Court in *London County Council v. Woolwich Union*, *infra*, p. 126. It is obvious that if for either land or buildings the higher capital values estimated by the respondents' witnesses are taken, the percentages above mentioned must be reduced.

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Castle, Q.C.: The appellants do not object to the proposal, provided that any rise in value that may be shown is not used over again as a ground for making a provisional list.

Sir P. H. EDLIN: We could state in our judgment that we had looked at the accounts up to January 31st, 1891.

Ultimately, the question of value was settled by a compromise upon the following terms:—The assessment to be reduced to 5,500*l.* gross and 4,000*l.* rateable value; no order as to costs: upon the understanding that this arrangement was to last for the quinquennial period, in the absence of any very exceptional circumstances (*a*).

Appeal allowed.



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Nov. 23, 24,
26, 27.

THE LONDON COUNTY COUNCIL *v.* THE ASSESSMENT COMMITTEE OF THE WOOLWICH UNION.

Sewage Works—Hypothetical Tenant—Occupation by Public Body for Public Purposes—Structural Cost—Structural Value—Rate of Interest on Value of Land and Buildings.

The Metropolitan Board of Works, in discharge of statutory duties, acquired lands and erected works, buildings, &c., thereon, for the purpose of dealing with the sewage of the Metropolis. For some years the sewage was discharged into the Thames in a crude state, whereby the river became polluted: to remedy the pollution, the sewage was subjected to chemical treatment, whereby the solid matter in suspension was precipitated, and the effluent was purified before being discharged into the river. In consequence of the adoption of the new system of treatment, parts of the works already constructed became unnecessary. In the original construction of the works, the foundations had been carried down to a greater

(*a*) A similar question as to accounts was raised in *South Metropolitan Gas Co. v. Greenwich Union*, *supra*, p. 56; *London Hydraulic Power Co. v. City of London Union*, *infra*, p. 138; *Gas Light and Coke Co. v. City of London Union*, *infra*, p. 204; *London and India Docks Joint Committee v. Poplar Union*, *infra*, p. 153. See also *South Metropolitan Gas Co. v. St. Olave's*, Met. Rat. App. 305; and *London Street Tramways Co. v. Islington, Ryde's Rat. App.* (1886-90) 147.

depth, and at a greater cost, than would otherwise have been necessary,—(1) in consequence of the support required for parts of the works which under the new system of treatment were unnecessary; and (2) in consequence of the unsuitable character of the soil. The works were, under the Local Government Act, 1888, vested in the appellants, to whom the statutory duties of the Metropolitan Board of Works were transferred.

Held, that in calculating the rateable value of the works, the appellants must be taken into account as possible hypothetical tenants.

Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union, Ryde's Rat. App. (1886-90), 314; 24 Q. B. D. 197; and *R. v. School Board for London*, Ryde's Rat. App. (1886-90), 235; 17 Q. B. D. 738, followed.

Metropolitan Board of Works v. Overseers of West Ham [1870], L. R. 6 Q. B. 193, not followed.

Held, further, that in calculating the rateable value of the works, the costs of those parts which, under the new system of treating the sewage, were unnecessary, together with the cost of the additional foundations required for those parts, must not be taken into account.

R. v. Mile End Old Town [1847], 10 Q. B. 208; 16 L. J. M. C. 184, followed.

Held, however, that the cost of the additional foundations rendered necessary by the unsuitable character of the soil must be taken into account in calculating the rateable value.

The respondents contended that the rateable value of the sewage works should be calculated at 4 per cent. on the value of the land, added to 5 per cent. on the value of the buildings. The appellants contended that, as they were able to borrow money at the rate of less than 3 per cent., the rateable value of the works should not exceed 3 per cent. on the value of land and buildings.

Held, that if the appellants were regarded as possible hypothetical tenants, both they and the hypothetical landlord must be assumed to have regard, in fixing the rent, to the appellants' power to borrow money at less than 3 per cent. in order to provide themselves with equally suitable premises elsewhere.

Seemle, the question of the proper percentage on the value of land and buildings is a question of fact for the sessions to decide.

In this case the Court calculated the rateable value of the sewage works at 3 per cent. on the value of the land, added to 4 per cent. on the value of the buildings.

THIS appeal related to the sewage works known as the Northern Outfall Works, situated on the banks of the

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1891.	Thames in the parish of Woolwich, and used in connection
L. C. C.	with the metropolitan system of sewers; but no part of
v.	the sewers themselves had been assessed. The property
WOOLWICH	was vested in the appellants, as the successors in law of the
UNION.	Metropolitan Board of Works, under the Local Govern- ment Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), and was described in the valuation list as "machinery, works and buildings, reservoir, settling chambers, iron water station house, coaling station, &c.," "land," and "deodorizing works." Prior to the year 1890, the property had been assessed at the nominal sums of 229% gross and 201% rate- able value. The overseers in 1890 increased the assessment to 2,419% gross and 1,843% rateable value; and the assess- ment committee made a further increase to 31,878% gross and 25,646% rateable value, but after hearing the appel- lants' objection reduced these sums to 28,000% gross and 23,000% rateable value.

The appellants in paragraph 6 of their case, claimed a reduction to 1,000% gross and 667% rateable value. Paragraphs 9 and 10 of their case were as follows:—

9. The principle of assessment relied on and adopted by the appellants with regard to the gross and rateable values of the said Outfall Works is that laid down in the case of *The Metropolitan Board of Works v. Overseers of West Ham* [1870], L. R. 6 Q. B. 193: "That they are to be rated at the value for which the same would let to a hypothetical tenant from year to year, supposing they were not used for the purpose of the main drainage scheme, but were entirely disconnected therefrom and applied to any other use or purpose for which they could be made available by a tenant thereof."

10. The appellants will also contend that even if they be taken into account as possible hypothetical yearly tenants, the gross estimated value of the said hereditaments should be reduced to 8,000%, and the rateable value to 5,334%.

Paragraph 12 of the respondents' case was as follows:—

"The respondents contend that it is not necessary to

rateability that the premises as actually occupied and utilized, should yield or be capable of yielding a commercial profit, and that it is sufficient if they could be let and would command a rent from any possible hypothetical yearly tenant, and that the appellants ought to be taken into account as possible hypothetical tenants. The respondents further contend that if the said premises belonged to a private owner, he would let and the appellants would hire them at a yearly rent sufficiently high, under the statutory conditions, to support the sums for which the respondents contend."

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Poland, Q.C. (*H. E. Ivory* with him), for the appellants : The present case is governed by *Metropolitan Board of Works v. Overseers of West Ham* [1870], L. R. 6 Q. B. 193, which followed *R. v. Metropolitan Board of Works* [1868], L. R. 4 Q. B. 15. The Court of Appeal in *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union* [1889], 24 Q. B. D. 197; *Ryde's Rat. App.* (1886—1890), 314, expressly refrained from overruling those decisions, although *Lopes*, L. J., thought them inconsistent with *R. v. School Board for London* [1886], 17 Q. B. D. 738; *Ryde's Rat. App.* (1886—1890), 235.

[It is thought unnecessary to report more fully the arguments, having regard to the decisions of the Court of Appeal and the House of Lords: *vide infra*, p. 403.]

The COURT did not call upon counsel for the respondents, upon the preliminary point of law.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): On this preliminary question of law which has been raised, we think this case is governed by the now well-recognized principle on which the *Burton-upon-Trent Case* and the *London School Board Case* were decided in the Court of Appeal. We say, further, that we are of opinion that if the London

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County Council were not the owners of these works, they would be willing to pay rent for them, and, therefore, they must be taken into account as hypothetical tenants.

The COURT granted a case for the opinion of the Queen's Bench Division upon this point (a).

Poland, Q.C., then proceeded to state the facts of the case: The works occupy about fifty-three acres of land. Prior to the year 1886 the sewage was brought down to the works and discharged into the river, in a crude state, only when the tide was ebbing. When the tide was running up the sewage was kept in a covered reservoir. The effect of this system having been found to be the deposit of large quantities of solid sewage matter in the upper parts of the river, in 1886 a new system was introduced, and the works were very materially altered in consequence. Some of the alterations are not yet completed. Under the new system, the sewage is chemically treated by processes which cause the solid matters in suspension to be precipitated, and the effluent is consequently purified and is discharged into the river at all states of the tide. The precipitated matter, which is called sludge, is put on board vessels belonging to the appellants, carried out beyond the Nore, and dropped into the sea. The effect of the adoption of the new system of treatment is that many additions have been necessarily made to the works, and that many parts of the already existing works have been rendered useless. For instance, the covering to the reservoir is no longer necessary, the sewage being now purified, so that if kept in the reservoir it does not create a nuisance. The cost of the covering, and of the additional foundations to support that covering, has thus been thrown away. Other parts of the works are actually disused, and some

(a) The proceedings in the Queen's Bench Division and the Court of Appeal are reported *infra*, p. 403. The decision of the quarter sessions was ultimately affirmed by the decision of the House of Lords in other appeals; *vide infra*, p. 414.

parts, although used because they exist, are no longer necessary; and, if the works were to be reconstructed, these parts would be omitted. The facts of the present case are therefore distinguishable from those of the *Burton-upon-Trent Case*, in which it was found as a fact (24 Q. B. D. at pp. 198, 199; Ryde's Rat. App. (1886—1890) at pp. 315, 317) that "the appellants would not be able to carry out their statutory duties as to the disposal of sewage at any other place at a smaller expense." One may apply to the present case the remarks of Lord Denman, C. J., in *R. v. Mile End Old Town* [1847], 10 Q. B. at p. 218; 16 L. J. M. C. 184:—"The company contend that the division [of rateable value among several districts] should be according to the amount of fixed capital in each district. But the rule of law, laid down by Act of Parliament, for ascertaining the rateable value of any subject refers to an estimate of the rent it should yield. The outlay of capital might furnish no such criterion, since it may have been injudiciously expended, and what was costly may have become worthless by subsequent changes." So, too, Cave, J., when *R. v. School Board for London* was before the Queen's Bench Division, pointed out (55 L. J. M. C. at p. 37) that interest on cost "is a rough test undoubtedly. It is a test in some cases, but it is not a test in others." [Sir P. H. EDLIN: In *R. v. South Staffordshire Waterworks Co.* [1885], 16 Q. B. D. 359, where the whole of the appellants' works were in use, but were in excess of the existing requirements of the company, and were created for, and adapted to, an increased supply in future years, it was held that the whole of the works being used, the whole of the capital expenditure must be taken into account, and not merely so much as would have sufficed to provide the existing supply.] In that case the greater part of the property was necessary for the water supply, which the appellants then had to give; and it was held that the appellants being in actual occupation of the whole, must be rated for it as a whole; but that, in dealing with the part indirectly productive of

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profit, the hypothetical tenant could not be supposed to give a rent higher than that calculated upon the necessities of his then business, and, consequently, that it was reasonable to take a very low percentage on the structural value of that indirect source of profit.

Again, in the present case, owing to the peculiar character of the sub-soil, the foundations of all the structures erected at these works had to be carried down to a much greater depth than would have been necessary if the ground had been suitable for building purposes. The additional cost of these foundations would fall upon the hypothetical landlord; and it would be wholly immaterial to the hypothetical tenant what the cost of construction had been. He would look solely at the capacity of the works in their present state. The actual cost of the works (exclusive of land) has amounted to 647,623*l.*, but the appellants will show that the works required for the purpose of treating the sewage as it is treated now, could be provided for the sum of 340,444*l.*, provided the structures were erected on land suitable for the foundations required. The appellants estimate the value of the land occupied by these works at 15,900*l.*, fifty-three acres at 300*l.* an acre. [This figure was ultimately accepted by the respondents.] Next as to the percentage on the capital value: The appellants can borrow money on the security of the rates at 2*l.* 17*s.* 6*d.* per cent.; if, therefore, the appellants are to be taken into account as possible hypothetical tenants, it is obvious (inasmuch as they are the only possible tenants of these works) that they would never agree to give to the hypothetical landlord a rent equivalent to 4 per cent. on the value of the land plus 5 per cent. on the value of the buildings. The appellants would sooner buy land and erect the necessary buildings for themselves by means of borrowed money. It is submitted that 3 per cent. on both land and buildings is a sufficient sum to fix as the rateable value.

The appellants gave evidence of fact, the greater part of which is, for the purposes of this report, immaterial. The

cost of the additional foundations was proved to have been 87,140*l.*; of this sum 65,906*l.* was caused by the unsuitable nature of the ground, and the residue was attributable to the additional foundations necessary to support the coverings of the reservoir, &c., which were said to be now useless. According to the appellants' evidence, although 340,444*l.* would be sufficient to provide works of the same capacity on a suitable site, yet it would not be sufficient outlay if the works were to be erected on the site occupied by the existing works, owing to the unsuitable character of the ground. It was further proved that certain works, though used at the date when the appellants stated their case, had, before the hearing of the appeal, become disused on the completion of a weir, which was, when the case was stated, in course of construction.

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The respondents called no witnesses.

Sir P. H. EDLIN in the course of the hearing said: The question as to the proper percentage on the value of land and buildings to be taken as representing the rateable value is, in every case, a question of fact for this Court.

Poland, Q.C. for the appellants: In rating hereditaments which are not in practice let, the Court must apply the principle laid down by Blackburn, J., in *Mersey Docks v. Liverpool* [1873], L. R. 9 Q. B. at p. 96: "The facts and circumstances which would be taken into consideration by those who, in the case of a real tenancy, do, in the higgling of the market, fix the rent, are to be taken into consideration, and on a view of all those the net annual value of the occupation is to be determined." This rule was repeated by Blackburn, J., in *R. v. London and North Western Ry. Co.* [1874], L. R. 9 Q. B. at p. 144: "In letting a thing from year to year the rent would be regulated by two matters: on the one hand, by the benefit the tenant would be likely to derive from the occupation, because he would

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not give more than that; on the other hand, by the nature of the property, such as its local situation, or how many persons there are who could supply him with an equally eligible thing, and be willing to let it to him." In the present case, therefore, the appellants cannot be supposed to be willing to give more as rent than the sum for which they could supply themselves with equally efficient works. Even if it be admitted that the cost of the additional foundations (viz., 65,906*l.*), rendered necessary by the unsuitable nature of the ground, must be taken into account, and added to 340,444*l.*, making a total of 406,350*l.* for the buildings and structures, and for the whole (including 15,900*l.* for land) a total value of 422,250*l.*, the rateable value should not be more than 3 per cent. on this amount, or 12,667*l.*; whereas the works are entered in the valuation list at 28,000*l.* gross and 23,000*l.* rateable value.

Little, Q.C. (*Sinclair Cox* with him), for the respondents: The appellants, by printing and circulating the resolutions passed by the representatives of the metropolitan assessment committees, have signified their approval thereof. Those resolutions provide that "Public buildings on which no private profit accrues (including workhouses, vestry halls, public libraries, schools, baths, wash-houses, and hospitals) (*a*), should be assessed at a gross value calculated at 4 per cent. on the present value of the land, and 5 per cent. on the value of the buildings erected thereon." These resolutions have been acted upon before the assessment committees in many cases. It is not consistent for the appellants to ask that a lower percentage should be taken in their own case. Different public bodies can borrow at different rates of

(*a*) For an instance of an appeal relating to schools, see *Westminster Union v. Wandsworth and Clapham Union*, *supra*, p. 31; and for an appeal relating to public baths, see *London County Council v. Lewisham Union*, *supra*, p. 104.

interest; but this fact cannot affect the value of the hereditaments they occupy. The effect of having regard to the different rates of interest would be to create gross inequalities. Again, the Gas Light and Coke Co. (whose appeals were recently before the Court, *infra*, p. 204), will be rated in respect of their works in this parish and the neighbouring parish of Barking, on a rateable value calculated at 4 per cent. on the value of the land, and 5 per cent. on the value of the buildings. It is manifestly unfair that the appellants should be rated in respect of their works, on a rateable value calculated at a lower percentage. [Sir P. H. EDLIN: The Gas Works are an undertaking occupied for the sake of profit.] It is said that the appellants are the only possible tenants of these hereditaments; but the same thing is true of all similar premises, *e.g.*, of the schools occupied by the School Board for London, or even of a railway station occupied by the London and North Western Railway. In the latter case, as the actual tenants have the only possible means of access, if they closed the station, it would be impossible (without the authority of a new Act of Parliament) for any tenant of the station to be found. If so, why should the Railway Company be rated (as they are) at more than 3 per cent. on the value of land and buildings, unless the appellants' contention is wrong. The number of possible hypothetical tenants cannot in law alter the amount of rateable value. An occupier cannot, on the ground that he is the only possible tenant, claim to be assessed at an amount less than the true rateable value. The respondents rely on the arguments which prevailed before the assessment sessions in *The School Board for London v. St. Mary, Islington* [1885] Met. Rat. App., pp. 396, 397, where it was said, that "Never, before this or any other Court, had it been contended that property in the hands of an occupier, for whose purposes it was particularly suited, should be rated at less than the full annual value to him, because, if it were in the market,

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and the present occupier did not compete, the property would command a mere nominal rent."

The CHAIRMAN (Sir P. H. Edlin, Q.C.) read the following judgment: The preliminary question upon which the parties are at issue in this appeal—whether the Northern Outfall Works and machinery at Woolwich, being adjuncts to the system of Metropolitan sewers, are rateable—appears to us to be governed by the now well-established principle upon which the *Burton-upon-Trent Case*, Ryde's Rat. App. (1886—90) 314; 24 Q. B. D. 197, was decided by the Court of Appeal. As to this ground of appeal therefore, our judgment is against the appellants, and it becomes necessary to determine what is the rateable value of these extensive works. Several questions have been raised in the course of the inquiry with regard to the proper basis for this calculation. A considerable portion of the original buildings, including the stone grips, and the coverings of the large reservoir, and the precipitation channels, are in our opinion entirely unnecessary for the purposes of the works, as they have been altered and adapted to meet the requirements of the present methods for the chemical treatment and disposal of the sewage, and it is obvious, therefore, that the total actual cost of the works is no criterion of their present lettable value. There must be due allowances for such now useless portions, but we cannot follow the appellants in their further contention that deduction should be made for the cost of the exceptional foundations necessitated by the peculiar nature of the soil, and their value to the occupying tenant estimated as if they had been laid in ordinary ground, for the reason, as it was argued on their behalf, that if a site for the works had now to be provided, a less expensive one in this respect would be chosen. The appellants are owners, as well as occupiers, but we have to hypothesize a landlord as well as a tenant, and to assess the lettable value *in situ*, as and where it stands. On the other hand,

and for the reason already stated, there should be due allowance for so much of the excavations and structural foundations as would have been superfluous for the works requisite under the new system—in short, in this, as in all cases, it is the actual lettable value that we have to find.

Another question, and one of the first importance, affecting as it may very materially the amount of the assessment and consequent liability of the appellants, is the proper percentage of interest on the landlord's capital invested, that is to say, on the value of the land and the structural value of the buildings. As a general rule the allowance has been 4 per cent. for the land and 5 per cent. for the buildings, not excepting buildings erected by public bodies for public or parochial purposes; and in dealing with the present appeal we must not be deemed to have expressed views opposed to those which have prevailed heretofore upon this question. These hereditaments are absolutely unique, and they are of exceptional magnitude. The appellants, as we have said, have to be taken into account as hypothetical tenants, but as a matter of fact they are the only possible tenants. To be logically consistent we must carry the hypothesis further, or we disregard the test prescribed by the statute. In bargaining with the hypothetical landlord, the appellants would assuredly have regard to what would be the resulting annual expense they would incur if they purchased land and erected equally serviceable buildings for themselves; and by force of the peculiar circumstances, the landlord also would be obliged to take note of this element in the calculation. In the present case we think that the rate of interest to be allowed on the value of the land should be 3 per cent., and on the buildings 4 per cent.; and that the total of these percentages should be taken as the rateable value.

We find the gross value to be 20,567*l.*, and the rateable value to be 17,139*l.* We make no present order as to the costs of this appeal, and it will be understood that the

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1891.	substitution of the new weir for the precipitation culverts,
L. C. C.	&c., is not to be the subject of any supplemental valuation
v.	list.
WOOLWICH	<i>Appeal allowed; case stated (a).</i>
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Edlin, Q.C.	



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Nov. 25, and
Dec. 18, 19, 21.

LONDON HYDRAULIC POWER CO. v. CITY OF LONDON
UNION.

*Hydraulic Power—Machinery—Tenants' Capital—Accounts—For
what Year to be taken.*

The appellants, by a Special Act, were authorized to supply motive power by hydraulic pressure, and to let for hire machinery for the purpose of supplying such power :

Held, that in ascertaining the rateable value of the pipes used for the supply of such motive power, the receipts from the letting of machinery to customers on whose premises it was used, and the cost of repairing such machinery, could not be brought into account; and that the value of such machinery could not be regarded as part of the tenant's capital which the hypothetical tenant of the appellants' premises would have to provide.

On an appeal, heard in 1891, against a valuation list made by the overseers, and revised by the assessment committee in 1890, it appeared that the appellants' receipts were rising very rapidly. The respondents tendered evidence based on the accounts for the year ending 31st December, 1890 :

Held, that although the accounts related to matters subsequent to the decision of the assessment committee, the sessions could look at them : but that they must have regard to the general result, rather than the precise figures.

The proper items to be included in making up the hypothetical tenant's capital, and the rate of interest to be allowed thereon, considered.

THESE appeals against the assessments of the appellants in the several parishes in the City of London Union

(a) The proceedings on the case stated for the opinion of the Queen's Bench Division, and on appeal therefrom in the Court of Appeal, are reported *infra*, p. 403.

were heard together. The assessments appealed against amounted in the aggregate to 5,000*l.* gross and 4,161*l.* rateable value.

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Littler, Q.C. (*H. E. Ivory* with him), for the appellants: The company was incorporated by the name of "The Wharves and Warehouses Steam Power and Hydraulic Pressure Company," under their Act of 1871 (34 & 35 Vict. c. cxxi); and by the London Hydraulic Power Act, 1884 (47 & 48 Vict. c. lxxii.), the present name of the company was substituted. By s. 38 of the Act of 1871, the company may, "within their district, supply motive power by hydraulic pressure to any person or persons, or company, and erect, and let for hire, and may work any cranes, machines, engines, or other apparatus for the purpose of supplying such motive power, upon such terms (pecuniary or otherwise), and subject to such conditions as may be agreed upon between the company and the person or persons, or company to whom the same is so let; and any such cranes, machines, engines, or other apparatus of the company shall not be subject to distress for rent of the premises where the same are used, or to be attached or taken in execution under any process in any Court of law or equity, or any other legal proceedings against any person or persons, or company, other than the company."

The pipes, the subject of the present appeal, are used for the supply of motive power by means of hydraulic pressure. Some of the machinery to which this motive power is supplied is the property of the customers of the company: in other cases, it belongs to the company, the customers paying a yearly rent for the use. The machinery (which consists of cranes, lifts, &c.) is fixed, but only in the same way in which a gas-meter is fixed, and may be easily removed. The appellants have brought into account all sums received for the hire, or repair of the machinery, and it must be regarded as representing part of the hypothetical tenant's capital, on which interest must be allowed, just as

1891.	the value of gas-meters is included in the tenants' capital in valuing a gasworks. The appellants claim interest on all tenants' capital at $17\frac{1}{2}$ per cent.			
LONDON HYDRAULIC POWER Co. v. CITY OF LONDON UNION.	The following evidence was given for the appellants.			
	Mr. Corbet Woodall, the consulting engineer of the appellants, made a valuation (based on the accounts of the year 1889), of which the following is a summary:—			
	Gross receipts for power, meter rents, and hire of machinery - - - -			£25,513
	Working expenses - - -	£9,861		
	Rates and taxes - - -	1,572		
				<u>11,433</u>
	Net receipts -			£14,080
	Occupiers' share:			
	Tenants' capital—			
	$\frac{5}{12}$ of £11,433, the expenses as above - - -	£4,764		
	Meters and consumers' machinery - - -	13,041		
	Stores, including coal - -	3,893		
	Furniture, &c. - - -	350		
	Bank balance - - -	500		
				<u></u>
	Say £22,500.	£22,548		
	Interest at $17\frac{1}{2}$ per cent. on £22,500 -			£3,937
				<u></u>
	Gross value - - -			£10,143
	Statutable deductions - -			4,424
				<u></u>
	Total rateable value -			£5,719
	Deduct rateable value of stations -			2,599
				<u></u>
	Rateable value of mains - -			£3,120
				<u></u>
	Rateable value of mains and station in City of London Union -			£1,717

The witness included in the gross receipts (1) sums received by the company for the hire of machinery supplied

by them to their customers, including machinery supplied on the hire-purchase system; and (2) sums received by the company for the repair of such machinery, the wages and expenses connected with such repair being included in the working expenses. In making up the tenants' capital, Mr. Woodall allowed five-twelfths of the total annual expenditure of the company, on the ground that the hypothetical tenant must be prepared to meet this expenditure before earning any income. The company made out their bills once a quarter, and the witness said that in this respect their position was analogous to that of a gas company [see, for instance, *Gas Light & Coke Co. v. City of London Union*, *infra*, p. 204, where similar allowances were claimed]. For the purpose of supplying the customers of the company with machinery to which the motive power was to be applied, the company kept in stock some machinery the value of which, together with the machinery in use, on hire or on hire-purchase, was taken at 7,215*l.*, and was included with the meters under the head of "meters and consumers' machinery, 13,041*l.*" The meters were taken by Mr. Woodall at cost price.

Mr. William Eve made a valuation (which followed generally the same lines as Mr. Woodall's) showing a rateable value, for mains and station in the City of London Union, of 1,922*l.* The following are the material points of difference: Mr. Eve omitted from the working expenses the sum of 636*l.* for "repairs to works and plant," which were included by Mr. Woodall at this point. This affected the tenants' capital which Mr. Eve calculated thus:—

Three-eighths of expenses (less repairs and rates), viz., 9,225 <i>l.</i>	-	-	-	-	-	£ 3,459
Rates for three months	-	-	-	-	-	422
Meters and consumers' machinery	-	-	-	-	-	13,041
Stores (tenants' only) and coal	-	-	-	-	-	3,893
Furniture, &c.	-	-	-	-	-	350
Bank balance	-	-	-	-	-	500

Say 21,000*l.*

£21,665

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The third, fourth, and fifth items in this list were taken from Mr. Woodall's evidence. Mr. Eve allowed interest at $17\frac{1}{2}$ per cent. on tenants' capital, saying that he had allowed for railways 16 per cent., and for a gas company 15 per cent. (*vide infra*, p. 212). He thought that $17\frac{1}{2}$ per cent. was not too much in the present case, because the appellants incurred great risks, and had no monopoly.

It was admitted on behalf of the appellants that their business was increasing very rapidly.

Balfour Browne, Q.C. (*Poland*, Q.C., and *R. Cunningham Glen* with him), for the respondents: The first question to be decided is on what year's accounts the calculations are to be based; it cannot be right to fix an assessment which is to last for five years from April 6, 1891, solely upon the basis of the accounts for the year 1889. The hypothetical tenant would look at the accounts for 1890. Next, in making up the tenants' capital, the sum of 7,215*l.* for consumers' machinery must be struck out altogether. The appellants are really carrying on two businesses, (1) that of supplying hydraulic power, and (2) that of letting out machinery to which that power can be applied. The two businesses are distinct, and it is a mere accident that they are carried on by the same persons; the respondents do not seek to bring into account any of the profits arising from the hire, sale, or repair of the consumers' machinery. That machinery, which consists of lifts, cranes, &c. must be regarded as part of the building in which it is placed, and the value of it must be taken into account in valuing that building. In *Tyne Boiler Works Co. v. Overseers of Longbenton*, Ryde's Rat. App. (1886—1890) 241; 18 Q. B. D. 81, it was held that machinery, which is on the premises to be rated for the purpose of making, and which does make, those premises fit for the purposes for which they are used, must be taken into account in estimating the rateable value of such premises. That test would clearly include the machinery here in question. The test formerly applied was whether the machinery would pass by a demise of the

rated premises : see *R. v. Lee* [1866], L. R. 1 Q. B. 241. Cranes and lifts would clearly so pass. The present value of the meters, and not their original cost, must be taken, as was expressly decided in *R. v. North Staffordshire Ry. Co.* [1860], 3 E. & E. 392. The allowance of three-eighths of the working expenses as part of the tenants' capital is not disputed ; but the amount of those expenses is contested.

The following is a summary of the evidence given for the respondents, the points of difference which related merely to questions of amount being disregarded :—

All the witnesses for the respondents had prepared alternative valuations based on the accounts for 1890, showing, in every case, a much higher rateable value than that shown on the accounts of 1889. To avoid multiplication of figures, the alternative valuations are not dealt with in this report.

Mr. W. H. B. Castle made a calculation showing a rateable value for station and mains in the City of London Union of 3,847*l*. He deducted from the gross receipts the receipts in respect of machinery on hire, and from the expenses, the cost of repairs to consumers' machinery. He allowed as the tenants' share 10 per cent. on the gross receipts instead of a percentage on a hypothetical tenant's capital, on the ground that 17½ per cent. on the tenants' capital necessary in the present case would be insufficient to remunerate the hypothetical tenant. The witness explained that had he calculated a tenant's capital in the usual way, he would have allowed five-twelfths of the annual expenditure ; the value of the meters he would have put at, say, 25 per cent. less than the cost price ; the other items claimed he would have allowed, and he considered that 17½ per cent. on the total was a fair allowance.

Mr. C. A. Lang proved a valuation showing a rateable value of 4,130*l*. in the City of London Union. This witness also struck out the receipts and expenditure relating to

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	Meters—at 33 per cent. less than cost price	- 3,884
	Stores, furniture and coal	- 1,000
	Balance at bank	- 500
	Rates in advance	- 500
	Say 9,000%. at 15 per cent.	£8,946.

Mr. Walter Barnett's valuation agreed in principle with Mr. Lang's.

Balfour Browne, Q.C., for the respondents: The accounts for 1889 and 1890 must be compared, and the Court are not asked to have regard exclusively to the accounts of 1890, though they furnish the best evidence of what rent a tenant for five years would give. [Sir P. H. EDLIN: This appeal is brought against a valuation made at a time when the facts recorded in the accounts of 1890 had not occurred, and perhaps were not foreseen. If you say the appellants' accounts show a steady rise, you may be fortified in your statement by events happening after the decision of the assessment committee. I doubt whether you can use, as direct evidence, the accounts of a subsequent period. You must refer rather to the general result, than to the precise figures.] That is all the respondents contend for. Taking a mean between the two years 1889 and 1890, the assessment appealed against is supported, if the consumers' machinery is struck out of the tenants' capital, and the value of the meters is depreciated.

Littler, Q.C., in reply: Whatever be the decision of the Court as to the inclusion of the value of the machinery as part of the tenants' capital, the repairs of the machinery

must be included in the working expenses, since they are necessary to earn the general receipts of the company. [Sir P. H. EDLIN: The value of the machinery, and the cost of repairing it, have been taken into account, in assessing the premises on which the machinery is placed.] There has been no decision that hired machinery must be taken into account in rating the premises containing it. Property which is hired would not pass under a demise of the premises, and the mere fact that it is hired prevents the possibility of its being so attached as to become rateable. In the *Tyne Boiler Works Case*, Ryde's Rat. App. (1886—1890) 252, Lord Esher, M.R., cites the description of rateable machinery given by Lush, J., in *R. v. Lee* [1866], L. R. 1 Q. B. at p. 257, "All these things are fixed and so far annexed as to be intended to be permanent, and as really necessary for the use of the premises as gasworks." And in *Laing v. Overseers of Bishopwearmouth* [1878], 3 Q. B. D. 299, this description was used: "The whole of the machinery in question, though some of it may be capable of being removed without injury to itself or the freehold, is essentially necessary to the shipbuilding business, to which the appellants' premises are devoted, and must be taken to be intended to remain permanently attached to them so long as those premises are applied to their present purpose." These descriptions do not apply to the machinery in the present case; for some of it consists of cranes, which form part of a builder's plant used in erecting houses, which are not intended to become in any sense part of the freehold on which they are used, and which are removed as soon as the house is finished and becomes a rateable hereditament. The mere fact that machinery is hired renders it a contradiction in terms to say that such machinery is "necessary" to the user of the premises. The lifts in the customers' warehouses are not "necessary," because every warehouse has a staircase as well. [Sir P. H. EDLIN: By parity of reasoning it may be argued that the staircases are not "necessary," because

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there are lifts.] In the *Tyne Boiler Works Case* (*ubi supra*), the word “fit” is used, but that is equivalent to “necessary.” There is no reason for making a depreciation on the cost price of the meters in the case of a new company. Moreover, the new meters actually in use are worth more than their cost price; for if a new tenant took over the appellants’ undertaking and refused to take these meters, he would have to pay the price of new meters, *plus* the cost of fixing them. As to the rate of interest on tenants’ capital, $17\frac{1}{2}$ per cent. is not too high, seeing that this is a new undertaking; a successful competitor may arise, and if so, the appellants’ mains will be absolutely useless. The appellants have no monopoly for the supply of motive power, nor have they any district allotted them within which they have even a monopoly of the supply of hydraulic power. In the case of a gas or water company, parliament never sanctions the creation of a rival supply within the same district. The appellants are content that the Court should look at the accounts of 1890, not as absolutely determining the rateable value, but as a means, and only as a means, of answering the question, what rent a tenant would give. There is no injustice in deciding this appeal on the accounts of 1889, because, as was pointed out by Blackburn, J., in *R. v. Abney Park Cemetery Co.* [1873], L. R. 8 Q. B. at p. 520, “the receipts in one year will govern the rateable value in the next.” Too much importance must not be attached to the accounts of 1890, because it may be that the overseers will rely on the increase in that year as a reason for making a supplemental list (a).

The CHAIRMAN (Sir P. H. Edlin): We have given a considerable amount of time to the hearing of this appeal, and in the course of prolonged arguments we have been

(a) The question as to the proper year to be looked at was also considered in *South Metropolitan Gas Co. v. Greenwich Union*, *supra*, p. 56; *Gas Light and Coke Co. v. City of London Union*, *infra*, p. 204; *Agricultural Hall Co. v. St. Mary, Islington*, *supra*, p. 125.

struck with the endeavour made by the appellants to include in their valuation the cost of "consumers' machinery" and the receipts derived from the letting on hire of machinery furnished by the company, and which is attached in some way to the consumers' premises; and in connection with this endeavour we have also to notice the allowances claimed by them for repairing such hired machinery as well as the machinery of which consumers have become the actual owners by purchase from the company. The questions here arising are of obvious importance in the calculation of the tenants' or occupiers' share of the working expenses, and of the amount of capital requisite for carrying on the undertaking; but, as I took occasion to remark in the course of the argument, if we are to deal with them consistently with the principles governing the inclusion of machinery on the premises, in estimating the rateable value, there should have been more precise evidence than is here before us. Both parties, however, having invited our opinion, I may say that the rule as it was laid down in *The Tyne Boiler Works Co. v. Overseers of Longbenton* [Ryde's Rat. App. (1886—1890), 241; 18 Q. B. D. 81], following a series of previous decisions on the subject, is plainly applicable here. It is admitted that in every one of these cases the machinery or other apparatus is attached in some way to the premises, and it is used for the purposes of trade; and if the premises respectively are assessable according to the value, as thus enhanced, the authorities are clear that it is absolutely immaterial to consider whether the machinery be real or personal property, or whether it be liable or not to seizure under a *fi. fa.*, or to distress for rent. The customer in these cases must have machinery or plant of some kind, to which the motive power has to be applied, and the inspection of such machinery may from time to time be desirable in the interests of the company supplying the power; but it is an obvious *non sequitur* to say that the cost and repair of such machinery constitute part of the expenditure on the

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1891.	rateable hereditament in the appellants' occupation, or—
LONDON HYDRAULIC POWER CO.	to put it in other words, to show the practical effect of this
v.	contention—that for rating purposes it is to be deemed a
CITY OF LONDON UNION.	constituent part of that which we have here to assess.
Sir P. H. Edlin, Q.C.	There have been wide differences also on the present appeal as to what would be the proper allowances on tenant's capital, and for the statutable deductions; but the conclusion at which we have arrived renders it un- necessary to express our opinion on these points. I may say that I have carefully collated the several valuations, and had it been necessary I would have stated what I conceive would be the proper figures for a just and equit- able basis for assessment; but it is not necessary. It is sufficient to say that, in our opinion, the respondents' figures are not excessive. We, therefore, dismiss this appeal, with costs to the respondent union.

Appeal dismissed.



1891.	GREAT EASTERN RAILWAY COMPANY v. CITY OF LONDON
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Aug. 2.	<i>Railway Terminus—Running Lines within Station—Principle of Valuation.</i>

In valuing a railway terminus, so much of the lines running into it as is within the station proper up to the buffer stops must be treated as part of the running lines, to which a proportion of the earnings per train mile must be attributed.

London and South Western Ry. Co. v. Lambeth [1870], Met. Rating App. at p. 62, not followed.

APPEAL against an assessment of 42,000*l.* gross and 35,000*l.* rateable value (in the valuation list for the parish of St. Botolph Without, Bishopsgate), in respect of "the enclosed Liverpool Street Station and offices of the Great Eastern Railway Company, and so much of the permanent

railway and other buildings and connections northwards as lie within the parish boundary.”

The appeal, which was decided mainly on questions of fact, calls for a report upon one point of principle only.

In the examination of Mr. Robert Vigers, the first witness called for the appellants, it appeared that he had not allocated any portion of the direct earnings of the company per train mile to so much of the running lines as was within the terminal station proper. In arriving at the value of the station, the witness had valued the entire area of land occupied (excluding the approach roads), and the platforms, at different prices per square yard; and all rails had been treated as sidings (whether platforms extended alongside of them or not) and had been valued at a uniform price per yard. It appeared that some of the platforms in the station were so long, that two trains could, and in fact often did, stand opposite one platform at the same time. On some of the lines trains remained standing all night.

Littler, Q.C. (W. Graham and E. Page with him), for the appellants: The method of valuation adopted by the witness is right, and it follows the decision given in 1870 by the assessment sessions in *London and South Western Ry. Co. v. Lambeth*, Ryde's Met. Rat. App. at p. 62. In that case, which related to Waterloo Station, “the several lines had been measured from the respective buffer-stops at the extreme ends of the platforms;” but the sessions held that “so much of these lines as were situated within the terminal station at Waterloo were a part of that station, and should not be measured as lines of railway.” It is submitted that the running line must be regarded as terminating at the external ends of the platforms, which are a mere receiving house for passengers. If the lines within the station are to be treated as running lines, they must be subtracted from the area of the station, and the value of the platforms must be ascertained on the assumption

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that they have no line alongside of them. In any event it cannot be right to calculate the mileage by measuring up to the buffer-stops, because many of the trains do not run in so far.

Balfour Browne, Q.C. (Poland, Q.C. and R. Cunningham Glen with him), for the respondents: Some portion of the earnings per train mile must be allocated to the lines within the station. The lines opposite the platforms must be regarded as being at the same time part of the station and part of the running line. It is admitted that there may be a doubt as to that part of the line opposite the platform where the train comes to a stand. In a roadside station it is impossible to use the lines as standing places for trains, as is done in this terminal station.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): I am not going to hold that the Court is bound by a decision given more than twenty years ago. At present we will reserve the question as to how the lines within the station are to be valued.

Ultimately the appeal was allowed, and in the course of the judgment the following remarks upon the point referred to were made by

The CHAIRMAN (Sir P. H. Edlin, Q.C.): With regard to the rule of mileage measurement within the station, we are of opinion that the buffers, wherever placed, must be deemed to mark the actual termini of the respective running lines.

Appeal allowed.



LONDON COUNTY COUNCIL *v.* FULHAM UNION.1892.
*Feb. 8.**Practice—Time—Notice of Intention to appear as Respondents—Costs.*

Where the respondents failed to give notice of their intention to appear as respondents at quarter sessions, within the time limited by O. 6, 1890, the sessions granted leave to appear on payment to the appellants of the costs of the motion for such leave.

MOTION for leave to appear as respondents in an appeal against the total in the supplemental list made in 1891, for the parish of Hammersmith in the Fulham union.

E. Boyle for the respondents in support of the motion : The respondents are entitled to appear, but the time for appearance has inadvertently been allowed to expire.

Walter C. Ryde for the appellants: By O. 6, 1890, “persons claiming to appear as respondents shall give notice in writing of their intention so to appear, . . . and such notice shall be . . . served on the appellant within fourteen days after the time limited by Order 5 for the entry of the appeal [*i. e.*, within fourteen days after January 14th], and the persons omitting to give such notice shall not be heard unless by special leave of the Court, until they shall have given such notice or complied with such terms as the Court may think fit to direct or impose.” The appellants do not resist the present motion, but are entitled to the costs.

The COURT gave leave, upon payment of the costs asked for.

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May 5.

PEARSON *v.* HOLBORN UNION.

Practice—Special Case—Appointment of Valuer.

Where, after notice of appeal to quarter sessions, an order had been made, by consent and by order of a judge of the High Court, for the statement of the facts in the form of a special case, under the Valuation (Metropolis) Act, 1869, s. 40, and the parties, being unable to agree upon the facts, applied to the sessions for the appointment of a valuer under s. 36.

Held, that, before the sessions could make the appointment, the parties must apply to the High Court for a discharge of the order for the statement of the case.

IN this appeal, which related to a volunteer store-house and drill hall, a case had been ordered to be stated under s. 40 of the Valuation (Metropolis) Act, 1869, which enacts that, “at any time after notice given of appeal under this Act to the [quarter] sessions, it shall be lawful for the parties by consent and by order of any judge of one of the superior Courts of common law at Westminster to state the facts of the case in the form of a special case for the opinion of any of those Courts, &c.”

The assessment appealed against was contained in the quinquennial list made in 1890.

E. Boyle, for the appellant : It has been found impossible for the parties to agree upon the facts to be stated in the special case, and the sessions are asked to appoint a valuer under s. 36 of the Valuation (Metropolis) Act, 1869.

R. Cunningham Glen, for the respondents, consented to the application.

It appeared that the order of the judge for the statement of the special case had not been discharged.

THE CHAIRMAN (Sir P. H. Edlin, Q.C.) : Unless the order of the High Court has been discharged, I think we should be usurping jurisdiction if we were to deal with the

appeal. This application must stand over to enable the parties to apply to the High Court for a discharge of the order for the statement of the special case (a).

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THE LONDON AND INDIA DOCKS JOINT COMMITTEE v.	1891.
THE STEPNEY UNION, THE POPLAR UNION, AND	July 28, 29;
ST. GEORGE'S-IN-THE-EAST.	1892.
	Feb. 8, 9, 11,
	12, 13, 15,
<i>Docks—Working Union between two Companies—Occupation—Statutory Division of Profits—Measure of Rateable Value—Parochial Principle—Accounts—For what Year to be taken—Deductions—Directors' Fees—Superannuation Allowances—Tenants' Capital—Dredging Plant—Prime Cost or Present Value—Warehouses occupied by Dock Company—Indirectly Productive Property.</i>	19, 20, 29,
	March 4, 29,
	30, 31,
	April 2,
	June 27,
	July 11.

Two dock companies, who had previously been in competition with each other, by an agreement embodied in a special Act, formed a "working union" for the "working, maintenance, and management of the undertakings of the two companies by a joint committee," who, by the provisions of the Act, were to divide the net profits of the working union between the two companies in certain specified proportions. The actual earnings of the several parts of the undertakings under the control of the joint committee were not in the same proportion as the statutory division of net profits.

Held, that the effect of the special Act was to make the joint committee, instead of the two companies, the occupiers.

Held also, that the statutory division of profits must be taken as the controlling criterion in estimating the rateable value of the property of the two companies *inter se*; but that, in apportioning the rateable value to the several parts of the property of each company, the parochial principle must be followed.

Semble, the question upon what year's accounts the calculations of rateable value are to be based, is a question of fact to be determined according to the special circumstances of each case.

One of the two companies had, before the formation of the "working union," entered into contracts whereby certain shipowners were

(a) The decision of the Queen's Bench Division upon the merits of this appeal is reported *infra*, p. 303.

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allowed large rebates in consideration of their bringing their ships to the docks of that company. These contracts remained in force after the creation of the "working union," and under s. 48 of the special Act, the joint committee were to deduct, half-yearly, out of the share of net profits of the company which had entered into the contract, the amount of the rebates, and carry the sum deducted to the revenue of the joint committee for the next half-year.

The same company were, before the formation of the "working union," the lessees of certain warehouses, and were also liable to make certain payments under a guarantee given to a railway company; and under ss. 47 and 62 of the special Act creating the "working union" the rent of the warehouses and the payments under the guarantee were charged to that company alone.

Held, that in calculating the rateable value of the Docks belonging to the said company, no deduction from the net profits could be claimed on account of the deductions so made by the joint committee under any of these sections of the special Act.

Fees were paid to members of the joint committee as part of the expenses of the "working union," and other fees were paid to the directors of each of the companies forming the union, out of the share of net profits appropriated to that company.

Held, that the former fees might be allowed as deductions from gross receipts, but that fees paid to the directors of the separate companies must be disallowed.

Before the formation of the "working union," each of the two companies had granted superannuation allowances to old servants; after the formation of the "working union," the joint committee granted other superannuation allowances. In the accounts kept since the formation of the "working union," the former allowances were paid by the separate company which had granted them; the latter allowances were paid by the joint committee as part of the expenses of the "working union."

Held, that the latter allowances might be claimed as a deduction from gross receipts, but not the former.

In calculating the necessary tenants' capital, the appellants claimed to take into account the value of certain dredgers and moveable plant used in dredging the docks.

Held, that as dredging was necessary, the whole expense of dredging could be deducted from the gross receipts, but that it formed part of the "other expenses necessary to maintain the hereditament in a state to command the rent," mentioned in the definition of gross value in s. 4 of the Valuation (Metropolis) Act, 1869; and consequently that the cost of dredging was a landlord's

expense, and the value of the dredging plant was not part of the tenants' capital.

Held also, that in calculating the amount of tenants' capital, the present value, and not the prime cost, of the tenants' plant must be taken.

The character of the machinery to be regarded as landlord's, or as tenants' plant, considered.

The appellants occupied both docks and warehouses, which were separately rated.

The respondents contended that, in rating the docks, the profits earned in the warehouses should be taken into account, and that the warehouses should be regarded as indirectly productive of value to the docks.

Held, that the warehouses must be separately valued, and that the profits earned there could not be brought into account in valuing the docks.

THESE appeals relating to docks occupied by the appellants, and situated in several parishes, were heard together.

In and before the year 1888, there were two dock companies competing with each other, viz., the London and St. Katharine Docks Company (hereinafter called the London Company) and the East and West India Docks Company (hereinafter called the India Company). The London Company were the owners and occupiers of the London Dock, the St. Katharine Dock, the Victoria Dock, the Albert Dock, and certain warehouses in Cutler Street. The India Company were the occupiers and (save as hereinafter mentioned) the owners of the East and West India Docks, the Tilbury Docks, and certain warehouses. By the London and St. Katharine and East and West India Docks Act, 1888 (51 & 52 Vict. c. cxliii.), a "working union" was created, to commence on January 1st, 1889. By ss. 10 and 11, the "London and India Docks Joint Committee" was incorporated, ten of its members representing and being nominated by the London Company, and the remaining seven representing and being nominated by the India Company. By s. 2, the expression "working union" was

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defined as meaning "the working, maintenance, and management of the undertakings of the two companies by the joint committee."

By s. 31, "From and after the commencement of the working union, all the powers and authorities, rights and privileges, immunities and exemptions, duties and obligations vested in, enjoyed by, or attaching to the two companies respectively or either of them, or their respective directors, or any committee of them, in relation to the following matters, shall be, and the same as from that time are hereby (subject to the provisions of this Act) transferred to and vested in or imposed on the joint committee, and (subject to the provisions of this Act) the special Acts and all contracts and agreements relating to or affecting the two companies respectively shall be read and have effect as if, in relation to the following matters, the joint committee had been named therein or bound thereby, instead of the two companies respectively (that is to say):—

"(1.) The working, maintenance, and management of the undertakings of the two companies;

"(2.) The fixing, collecting, receiving, and enforcing payment of tolls, rates, and charges;

"(3.) The appointment, remuneration (including superannuation and other allowances), dismissal and retirement of officers and servants, except such officers and servants as either of the two companies or their directors may require for transacting the business of the company as regards internal regulation and administration, and any powers and duties of either company not by this Act transferred to the joint committee;

"(4.) The execution and providing of works by the two companies;

"(5.) The supply of working plant and rolling stock; and

"(6.) All or any matters incidental to any of the matters above mentioned.

“Provided that nothing in this section shall be deemed to extend the provisions of any special Act or Acts relating to either of the two companies, or their undertaking to the other of the two companies, or their undertaking.”

By s. 34, “All officers, clerks, and servants who, at the commencement of the working union, are in the employment of either of the two companies, shall thereupon become officers, clerks and servants of the joint committee, with the same rights and subject to the same obligations and incidents in respect of such employment as nearly as may be as they would have had or been subject to in their capacities of officers, clerks, and servants of the respective companies, and shall so continue unless and until the joint committee remove them from such employment or alter the terms of their employment, which it is hereby declared the joint committee may, in their uncontrolled discretion, do at the like times, in the like manner, and subject to the like terms and conditions (if any), at, in, and subject to which the respective company might have done so, and the respective sureties of those officers, clerks and servants shall continue liable as if they had become bound in relation to any employment commenced under the joint committee.”

By s. 39, “Subject to the provisions of this Act, from and after the commencement of the working union, actions, indictments, and proceedings, which, if a company (instead of the joint committee) had been by this Act authorized to work, manage, and maintain the undertakings of the two companies might have been brought or prosecuted by or against that company, may be brought or prosecuted by or against the joint committee, and not otherwise; but nothing in this Act shall make the joint committee liable for any act done or default committed by either of the two companies before or after the commencement of the working union.”

By s. 40, “From and after the commencement of the working union, the joint committee shall alone have power

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to enter into any contract, or incur or undertake any obligation for, or in connection with, or in respect of the joint undertaking or the working union, and no obligation or duty or liability whatsoever shall attach to either company in respect of any such contract or obligation entered into by the joint committee, or in respect of any act or default of any officer or servant or agent employed or taken over by the joint committee, and all liabilities or losses or damages suffered or incurred or payable by the joint committee in consequence or by reason of anything done or omitted to be done, by them as such committee or of anything done or omitted to be done by any officer, servant, or agent acting for them shall be paid or retained by the joint committee out of the moneys coming to their hands as the earnings or on account of the two undertakings or either of them.

By s. 41, "All working plant, working and rolling stock, implements, gear, tools, and all other things employed or necessary for the current daily working of the undertakings of the two companies respectively under the working union shall be transferred to, and are hereby vested in, the joint committee for the purpose of carrying on the working union; and all unissued stores of either of the two companies shall be taken by the joint committee at cost price and the amount found to be due to that company shall be paid by the joint committee or credited by them in account to that company."

By s. 42, "Subject to the provisions of this Act, the joint committee shall, out of the moneys for the time being in their hands, provide for the working and establishment and other proper ordinary expenses of the working union, including the cost of maintenance, repair, and renewal of works, buildings, appliances, machinery, rails, plant, and rolling stock, and including also the remuneration of the members of the joint committee and of the standing arbitrator, and pay the passenger traffic duty and all tithes, tithe rentcharge, county, metropolitan, parochial, and other

rates and assessments whatsoever chargeable to the two companies in respect of their several undertakings, and subject nevertheless, as hereinafter provided, shall divide the balance remaining in their hands half-yearly between the two companies in the proportions of 69 per centum to the London Company, and 31 per centum to the East and West India Company, and shall pay to them their respective proportions accordingly." [The remaining clauses of s. 42 are, for the purposes of this report, immaterial.]

The appeals related to the East and West India Docks (the property of the India Company) in the parishes of All Saints, Poplar, and Bromley St. Leonard's in the Poplar Union; and to so much of the London Dock (the property of the London Company), as is situated in the parishes of St. Paul, Shadwell, and St. John, Wapping (both of which parishes form part of the Stepney Union), and in the parish of St. George's-in-the-East.

The appeals came first before the Court on the following preliminary questions of law formulated by the appellants:—

1. Whether, having regard to the provisions of the London and St. Katharine's and East and West India Docks Act, 1888, the appellants, the London and India Docks Joint Committee or the London and St. Katharine's Docks Co. and the East and West India Docks Co. respectively, should be named in the several valuation lists as the occupiers of the hereditaments belonging to those two companies respectively.

2. Whether the statutory division of profits prescribed by the said Act is to be taken into account as a controlling element in ascertaining for rating purposes the value of the various properties of the said dock companies respectively.

3. If question No. 2 is answered in the affirmative, upon what principle are the 69 per cent. and 31 per cent. respectively of profits to be apportioned amongst the various properties which go to make up the several under-

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[Other questions were also raised, but were either left unanswered or were answered at a later stage, after further argument.]

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Balfour Browne, Q.C. (*Fullarton*, Q.C., *Kenelm Digby*, and *Reginald Brown* with him), for the appellants: First, the Court should substitute the name of the company to which each dock belongs, for the name of the joint committee, who are entered in the valuation lists as the occupiers of each dock (*a*). The joint committee are in effect managing each dock on behalf of the company to which it belongs. If necessary, the Court can add to the description of the occupiers in the valuation list, words, such as "representing the two companies," or "the company." The object of making the joint committees the occupiers, is to exclude from consideration part of the working expenses, which ought to form a deduction in the calculation of rateable value. Secondly, the statutory division of profits prescribed by the Act of 1888 is to be taken into account as a controlling element in ascertaining for rating purposes the value of the various properties of the two companies. The effect of the Act has been that some of the traffic has left the East and West India Docks, and has gone to docks which are the property of the London Company. The payment of 31 per cent. of the profits of the entire undertaking to the India Company, gives a greater proportion of profit to the docks of that company than they in fact earn. It is immaterial to the hypothetical tenant of the East and West India Docks, in what part of the undertaking the profit may be earned, if

(*a*) This point was not mentioned in the appellants' notices of appeal, nor did it appear to have been raised at the hearing of the objections before the assessment committees. The respondents, however, agreed in asking for a decision on the point by the sessions.

31 per cent. of the whole is guaranteed to him. If the 31 per cent. represents a larger sum than the actual earnings, the hypothetical tenant would give a rent larger than that warranted by the actual earnings. The East and West India Docks are struck, not, as has been said in other cases, with sterility, but with fertility. The division of profits is not a private arrangement, but is created by statute, and must be taken as binding on any hypothetical tenant. The contention on behalf of the Stepney Union and the parish of St. George-in-the-East (in which the London Dock is situate), that the statutory division of profits is to be ignored, and the actual traffic and earnings are to be looked at, is inconsistent with itself; for the Act of 1888, which creates the division of profits, itself brings additional traffic to the London Docks. If the Act were repealed, part of the traffic would go back to the East and West India Docks. If the statutory division of profits is to be ignored, the Court must inquire what would be the earnings of each dock apart from the Act, and without the existence of the working union which the Act creates. The hypothetical tenant of the London Dock would look not merely at the actual traffic, but at the provisions of the Act which creates that traffic. The London Dock is now, for rating purposes, in a position very like that of the line of railway in *Altrincham Union v. Cheshire Lines Committee* [1885], 15 Q. B. D. 597. There the special Act which authorized the making of a railway by the predecessors in title of the Cheshire Lines Committee, provided that the London and North Western Railway Company should have the right to run their traffic over a part of the line, on payment of a fixed annual rent to the Cheshire Lines Committee. The rent was much less than the actual value of the traffic passed over that part of the line by the London and North Western Company, and it was held that the Cheshire Lines Committee could not be rated for poor rate in respect of that traffic at a higher sum than the fixed rent. The only difference between

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that case and the present is, that there the rent was a fixed annual sum, here it is a fixed proportion of a varying sum. Thirdly, assuming that the second point raised by the appellants is answered in their favour, the 69 per cent. and the 31 per cent. of the profits of the joint undertaking must be apportioned among the various properties, making up the separate undertakings of the London Company and the India Company respectively, in proportion to the receipts and expenditure in each parish.

*Poland, Q.C. (J. M. Stone with him), for the Stepney Union, in which part of the London Dock is situated: As to the first point; the effect of the Act of 1888 is to make the joint committee, and not the separate companies, the occupiers of the docks. The Act (by s. 31) vests in them the working, maintenance, and management of the undertakings of the two companies; the fixing, &c. of tolls, rates and charges; and the appointment, payment, and dismissal of officers and servants. These powers involve the occupation of the hereditaments. It is true that, by s. 51, "the joint committee shall not have power to make or incur any expenditure or liability on capital account except with the previous assent of the boards of directors of the two companies, but subject thereto any capital required for enlargements of, or additions to, the undertaking of either of the two companies shall, unless otherwise agreed between the two companies, be provided by the company owning the property to be enlarged or added to." This provision is not inconsistent with an occupation by the joint committee, because the owner, and not the occupier, would be the person to make additions to the freehold. Under 43 Eliz. c. 2, the person who is *de facto* in possession is liable to poor rates. In the present case, the two companies cannot interfere in any way with the occupation of the property. In *Kittow v. Liskeard Union* [1874], L. R. 10 Q. B. 7, it was assumed that the persons*

rated, had only a *licence* to dig for minerals, and otherwise use the land in question, but the Court held that as those persons had *de facto* been permitted to erect buildings, to fix machinery, and to make roads, they were rightly rated. In *Midland Ry. Co. v. St. Mary, Islington*, Ryde's Rat. App. (1886—90), 139, under the terms of a special Act, the Great Eastern and Midland Companies were to maintain, manage, work, and use a railway belonging to the Tottenham and Hampstead Jn. Ry. Co.; to control the traffic, to appoint the necessary staff, and to pay to the Tottenham and Hampstead Co. a percentage of the fares and tolls: it was held by the assessment sessions that the Midland and Great Eastern Companies were the occupiers. In *Tunnickliffe v. Birkdale Overseers*, Ryde's Rat. App. (1886—90), 286, the Court of Appeal had to consider whether the managers of a reformatory school were the occupiers of that school; and in holding that they were, Lord Esher, M.R., said (at p. 293) "The school is instituted by the managers or by persons behind them. The managers appoint and dismiss the persons in actual occupation. Those persons are therefore the servants of the managers, who are the occupiers by their servants." And Fry, L.J., said (*Ib.* at p. 294) "Who are the appellants who are charged with occupation? They are the committee of management appointed by benevolent persons who have combined to form a fund, and carry on this institution." Save that in the case of the docks the management is for commercial, and not for benevolent purposes, the joint committee come within the language used by the Court of Appeal. Secondly, the statutory division of the profits of the whole undertaking in the hands of the joint committee does not affect the rateable value, and the ordinary principle must be applied. The docks here are quite distinct from each other, and the facts are like those in *Mersey Docks and Harbour Board v. Overseers of Liverpool* [1872], L. R. 7 Q. B. 643. There the appellants were owners and occupiers of docks in different parishes on both

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sides of the Mersey, which docks were by statute to constitute one estate under one management. Certain rates were charged to vessels entering any one of the docks; and a vessel, having paid for entering one of the docks, could use any of the docks of the same class on either side of the river, or of a higher class, by paying the difference. The docks on the Liverpool side were much more frequented than the docks on the Birkenhead side; and it was held that in rating the docks on the Liverpool side they were not to be treated as one system with those on the Birkenhead side, but that the earnings and outgoings of each set of docks must be kept distinct, and the Liverpool docks rated according to the net earnings on that side. The Court distinguished *R. v. Hull Dock Co.* [1852], 18 Q. B. 325, on the facts. In that case an assessment on the acreage principle was held right on the ground that it was unavoidable, it being impossible to appropriate the net earnings to each parish. No such difficulty arises here, and, as was said by Blackburn, J. (L. R. 7 Q. B. at p. 651), "We must follow the parochial principle wherever it is possible." In the later case of *Mersey Docks and Harbour Board v. Overseers of Birkenhead* [1873], L. R. 8 Q. B. 445, the rating of certain warehouses, &c. occupied with the docks, but capable of separate beneficial occupation, was considered. The working of the docks and warehouses together produced no profit: it was held that the warehouses were rateable notwithstanding, and that they ought to be rated at the value as enhanced by reason of their proximity to the docks. These cases show that, wherever it is possible, each part of a property such as this must be separately valued. The true value of each part according to its earning power must be ascertained. The division into 69 and 31 per cent. merely represented the supposed relative value at the date of the agreement which was embodied in the Act of 1888. If it is to control the rating now, it must do so for all time, even though more and more of the profits may be earned in the London

Company's property, and even though it be found convenient to shut up the India Company's docks. To rate an unused dock on the basis of 31 per cent. of the profits earned by another dock would be an absurdity. Again, to make the statutory division of the net profits of the whole undertaking the basis of calculation involves a disregard of any special item in the working expenses. Suppose, for instance, the cost of dredging in the India Company's docks is high in proportion to the cost in the London Company's docks, the extra expenditure will be spread over the whole undertaking if the net profits of the whole are looked at. The principle of *Altrincham Union v. Cheshire Lines Committee* [1885], 15 Q. B. D. 597, does not apply to the present case; for there the payment was made to the occupier, and it was held that, inasmuch as the occupier could not get more (in respect of part of the occupation) than a fixed annual sum, he could not be rated for more than that sum. In the present case, if (as the respondents contend) the joint committee are the occupiers of these docks, the payment of the 31 per cent. to the India Company is a payment not to, but by the occupiers. There is, therefore, no limit put by statute upon the earnings of the occupiers, who may make as much as they can by their occupation. [Sir P. H. EDLIN: If the India Company's docks earned 90 per cent. of the whole, they must be content with 31 per cent.] Yes, but they receive that *quâ* landlords. The distinction between a payment to, and a payment by, the occupier was pointed out in *Midland Ry. Co. v. St. Mary, Islington*, Ryde's Rat. App. (1886—1890) at p. 143, in which case the assessment sessions held that (under circumstances somewhat like those of the present case) the assessment was to be based on the profits earned in each parish. In *R. v. Fletton* [1861], 30 L. J. M. C. 89; 3 E. & E. 450, the occupiers had sub-let a portion of a railway station for a fixed annual payment; and it was held that this payment, although greater than the actual value of the station, was rightly taken into account in

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rating the occupiers. There, too, as in the *Altrincham Case*, the payment was made to the occupiers. In *R. v. Rhymney Ry. Co.* [1869], L. R. 4 Q. B. 276, the railway company were the occupiers of certain wharves, and, by agreement with the owners, certain dues paid by the owners or consignees of goods were paid direct to the owners of the wharves; it was held that the railway company were liable to be assessed in respect of the full rateable value of the premises, including the wharfage dues, without regard to the amount of benefit which they themselves derived from the occupation. The Court there pointed out "the fallacy of confounding the rateable value of the property occupied with the remunerative value to the particular occupier"; and said, "The wharfage dues arise from the use of the land of which the appellants are the sole occupiers, and would, but for the arrangement between them and the [owners], greatly enhance the remunerative value to them. That arrangement may be improvident as regards their own interest, but does not render the wharves themselves of less value."

F. M. White, Q.C. (A. M. Bremner with him), for the Poplar Union, in which the East and West India Docks are situated: First, it is submitted that the joint committee are the occupiers, and that the respondents' arguments just stated on this point are correct. Secondly, it is submitted that the statutory distribution of profits is the controlling criterion in estimating the rateable value, and that appellants' argument on this point is correct. The joint committee, although the occupiers, may be regarded as managing on behalf of the two constituent companies. Consequently, the division of net profits into 69 and 31 per cent. is equivalent to the payment of those percentages to the occupiers of the docks. The present case is, therefore, within the principle of *Altrincham Union v. Cheshire Lines Committee* [1885], 15 Q. B. D. 597. In *R. v. Rhymney Ry. Co.* [1869], L. R. 4 Q. B. 276, the payment

of the dues to the owners was the effect of an agreement binding only on the parties thereto; in the present case the division of the net profits is by statute, which is binding on every possible hypothetical tenant. Thirdly, the subdivision among the several parishes of the rateable value of the India Company's property, calculated on the 31 per cent. of profits paid to them, should be, according to the parochial principle, with reference to the earnings in each parish.

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Littler, Q.C. (Alex. Glen with him), for the parish of St. George-in-the-East, in which part of the London Dock is situated: First, the joint committee are the occupiers for the reasons already given on behalf of other respondents. Secondly, the statutory division of net profits may be one of many criteria of value, but it is not the absolute and sole criterion. The question of value is a question of fact. The Act of 1888 has taken the occupation away from the two companies, and has prohibited them from again becoming occupiers. It is impossible that a distribution to persons who are not, and cannot be, occupiers, should be the measure of the value of the occupation of each part. The joint committee are tenants of the whole, and what they have earned is to be divided among two landlords in a specified proportion. This provision is analogous to an arrangement whereby one railway company buys the line of another, on payment of specified sums to the holders of preference and ordinary shares. A greater proportion of profits has been attributed to the East and West India Docks in order to buy off competition. The principle on which this case must be decided is laid down by Lord Chelmsford in *Jones v. Mersey Docks* [1865], 35 L. J. M. C. at p. 30; 11 H. L. C. at p. 519: "The taxation is to be on every occupier according to the ability of the parish. The productive occupation of the several occupiers within the parish make up its aggregate ability. If an occupier derives no benefit of any description from his occupation, it forms no part of the general ability of

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the parish; but if it is productive (although not profitable), there is nothing in the Act [43 Eliz. c. 2] which requires the overseers to follow the produce in its subsequent application. The receipt of it constitutes the visible ability of the occupier." As was said by Lord Tenterden in *R. v. St. Giles', York* [1832], 3 B. & Ad. 579: "If any profit be made, the application of it when made is immaterial as to the question of rateability." The effect of the appellants' contention in the present case is to transfer part of the "visible ability" of the parish of St. George-in-the-East, in respect of the London Dock, to the Poplar Union where the East and West India Docks are situated. Suppose that the joint committee, for economy of working, shut up the East and West India Docks; there would then be nothing to rate in the Poplar Union, and the payment to the owners of the disused docks would be similar to the payment of the ground rent of an empty house. In the *Altrincham Union v. Cheshire Lines Committee* [1885], 15 Q. B. D. 597, the occupier bound himself not to receive more, in respect of part of the occupation, than a specified sum; in the present case, the occupiers, in respect of the London company's property, are getting more than the fixed annual payment every year. There is nothing to prevent the letting of one dock (*e. g.*, to a company of shipowners) if it be for the joint benefit of the whole undertaking; and in that case the assessment will be based on the actual earning power. A distinction must be drawn between a statutory restriction, which is a fetter attaching to the property itself, and a restriction which is a fetter attaching to the occupier for the time being: *per* Sir R. E. Webster, A.-G., *arguendo*, in the *Burton-upon-Trent Case*, Ryde's Rat. App. [1886—1890], at p. 321. In the present case, the statute fetters only the particular occupier, and does not restrict the profits. If the joint committee wanted to become the tenants of the London Docks, they would not be influenced by the statutory distribution of the profits. The statutory bargain ought not to affect the parishes,

who had no *locus standi* to oppose the bill which embodied it. The arrangement is like a partnership contract, where a business is carried on in premises belonging to one partner. [Sir P. H. EDLIN: Assume a hypothetical tenant of the property of the London company; is it possible to conceive that he would give more than a rent calculated on the 69 per cent. of profits?] It is not necessary to assume the same person as the hypothetical tenant of both sets of docks; unless this assumption be made, it is obvious that a tenant would give the full value for the London Docks, although his landlord might be obliged to hand over part of the rent to the India Company. A tenant would not give a less rent on that account.

Lastly, the Court is asked to say what year's accounts shall be made the basis of calculation. The overseers in making the valuation list appealed against took the accounts for the year 1889. In *The Gas Light and Coke Co. v. City of London Union*, *infra*, p. 204, this Court took the accounts for the year ending June, 1890.

Sir P. H. EDLIN: For convenience sake we made that order in those appeals, but it was clearly understood that we did not concede that as of right to the parties asking for it. It was done for convenience, because the parties were threatened with an appeal the next year and a supplemental list unless the accounts were so taken. But *non constat* that the same reasons exist in the present case.

[Ultimately all parties to the appeals took the accounts for the year 1889, notwithstanding the fact that a very serious strike occurred in that year. The question was also considered in *South Metropolitan Gas Co. v. Greenwich Union*, *supra*, p. 56; *Royal Agricultural Hall Co. v. Islington*, *supra*, p. 125; *London Hydraulic Power Co. v. City of London Union*, *supra*, p. 138.]

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Balfour Browne, Q.C., for the appellants, in reply: If the joint committee are regarded as the tenants, there is nothing to rate, because they have to hand over, not merely the landlord's rent, but the whole of the net profits to the two companies. The tenancy is, therefore, absolutely struck with sterility, and the hypothetical tenant must be put in the same position as the actual occupier. Secondly, as to the division of profits, in ordinary cases rateable value is ascertained by deducting working expenses from the gross receipts, and dividing the remainder among the several parishes interested. In the present case, part of this process is already done by the statute. If injustice be the result, it is the effect of the statute, which is binding on the hypothetical tenant and on the parishes. Even if it be only a private Act, that is immaterial, as was decided in *Altrincham Union v. Cheshire Lines Committee* [1885], 15 Q. B. D. 597. The statutory division must either be the controlling criterion of value, or it is entirely irrelevant. If the Court look merely at the actual earnings of each dock, they may be doing injustice, because, under the Act of 1888, it is immaterial into which dock the joint committee send the traffic, whereas, while competition lasted, each dock was using the utmost of its earning power. Consequently, the parochial principle cannot fairly be applied to the present case, because the traffic is not regulated by the conditions of free competition.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): With regard to numbers one and two of the appellants' questions, I do not propose to go into all the points that have been argued before us. The cases as stated by the respective parties, and the questions thereupon submitted for our consideration, present many opposite views, and not inconsiderable difficulties; but we find that the contentions originate for the most part in the desire influencing both sides,

though for contrary reasons, to enforce or reject the provisions of the Act of 1888, according to the advantage possibly derivable from following the one course or the other.

On the one hand, the joint committee, the actual persons rated, seek to introduce their constituent companies as joint occupiers with themselves, in order, as it would seem, to obtain credit for certain expenses incurred by them alike respectively, and which do not enter into the general account. On the other hand, Mr. Poland, for the Stepney Union, and Mr. Littler, for St. George-in-the-East, insist that the joint committee only are the legal occupiers under the Act, but deny that the statutory apportionment of the profits which immutably defines and limits their respective rights, and by which each company is tied and bound, is the criterion of the rateable value in respect of either undertaking, and contend that the whole account of the receipts and expenditure must be open for the purpose of dealing with every part of the hereditaments on the parochial principle.

We find it impossible to adopt either of the views here presented by the parties opposed. With regard to the question of occupation, we are of opinion that the joint committee must be deemed to be the legal occupiers, and are therefore properly entered in this valuation list as the persons to be rated in respect of the entire undertakings.

With regard to the apportionment of net profits (I state this as our answer for the present to the first and second questions in the appellants' list), we are of opinion that the statutory percentage, the statutory apportionment, should be deemed to be the controlling criterion, and we should propose to deal with all these appeals accordingly. But the question is one, undoubtedly, of considerable difficulty, and of great importance, and if it should be the wish of Mr. Poland and of Mr. Littler that we should state a case for the opinion of the High Court upon these points, we should consider it our duty to do so. In that case, and

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1891. having heard the expression of their opinion with regard to such a case to be stated for the purpose of appeal, it would be our duty to have the accounts stated in the alternative to meet either view as the High Court may decide: because the High Court will not entertain an interlocutory question of law.

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As to the other questions, some of them admit neither of affirmative nor negative answers without material qualifications. The answer to the appellants' third question is that the valuation of the various properties which go to make up the several undertakings of the London and India companies respectively should be done on the proper parochial principle, as in the *Mersey Docks Case* [1872], L. R. 7 Q. B. 643.

1892. The appeals were afterwards heard upon the facts.
The assessments appealed against, in respect of the several properties, were as follows:—

February 8,
9, 11, 12, 13,
15, 19, 20,
29;
March 4, 29,
30, 31;
April 2.

London Dock—				Rateable Value.
St. George-in-the-East	-	-	-	£36,000
Stepney Union—				
St. John, Wapping	-	-	-	14,917
St. Paul, Shadwell	-	-	-	9,375
East and West India Docks—				
Poplar Union—				
All Saints, Poplar	-	-	-	52,000
Bromley St. Leonard's	-	-	-	4,333

Balfour Browne, Q.C. (*Fullarton*, Q.C., *Kenelm Digby*, and *Reginald Brown* with him), for the appellants: The decision of the Court (that the statutory division of net receipts is to be the "controlling criterion" in calculating the rateable value) is accepted; but that division has not completed the calculation, and has left certain deductions still to be made. The Act of 1888 has put the two companies and the joint committee in a position which is

analogous to that of landlord and tenant, but the object of the Act was to put a stop to competition and not to define what are the landlord's and tenant's duties, as they must be distinguished for rating purposes. The Act has therefore arbitrarily divided the duties of landlord and tenant, and has, for convenience of arrangement, directed the landlord to perform some of the tenant's duties. An expense which the statute has put upon the landlord may still be ground for a claim for deduction on the part of the hypothetical tenant. Suppose, for example, a railway were let on the terms that the landlord should supply the tenant with locomotives, the locomotive expenses would still form a deduction which the hypothetical tenant could claim. In the present case the Act has put (or has been construed by all parties as putting) upon the separate companies the payment of superannuation allowances made to persons who had already retired before the passing of the Act. The payment of such allowances is an economical thing for a tenant to contract to do, because it enables him to employ servants at first at a lower rate of wages, and of this lower rate the parishes have already had the benefit in the past in the reduced expenditure on account of wages. Had these appeals come before the Court in the year before the passing of the Act of 1888, the payment of the superannuation allowances by each company must have been admitted as a proper deduction from the receipts. The Act has combined the two companies, and, for convenience, has directed that each company shall pay its own superannuated officers; but this arrangement cannot affect the true character of the payments, which are merely wages in another form. Consequently the payments are a proper deduction from the percentages of profits paid to the two companies respectively. Again, the statutory percentages represent the profits earned by all the properties of each company, some of which are separately assessed, and are not the subject of appeal; a deduction must be made under this head from the profits paid over

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by the joint committee to each company. [The respondents did not dispute the making of some deduction or apportionment, but the amount of the deduction was contested]. Again, with regard to expenses (*e.g.*, dredging) which are borne by the joint committee, the actual expenditure of each year is deducted in order to ascertain the amount of net profits to be divided in that year; but for rating purposes the value of the docks must be taken "one year with another." Consequently, the average expenditure must be taken, and the proper method is to add to the net profits the amount actually expended and to deduct the average annual expenditure. The particular item of dredging varies very much, and the general expenses of maintenance have been kept far below the average, in consequence of the diminution of dock receipts in recent years.

The following questions relate specially to the East and West India Docks: The Act of 1888, by s. 47, enacts as follows: "All rent payable from time to time in respect of the warehouses and premises connected therewith, situated in the Commercial Road, in the county of Middlesex, and now leased to or in the occupation of the" India Company, "shall, as between the two companies (notwithstanding that such warehouses and premises are part of the undertaking of the" India Company, "and, as such, subject to the working union), be and remain payable by" the India Company "alone, and shall be deducted by the joint committee from any moneys payable by them to" the India Company "under the provisions of this Act. All tithes, tithe rentcharge, rates, taxes, premiums of insurance, and other outgoings whatsoever in respect of the said warehouses and premises mentioned in this section, shall be paid and borne by the joint committee, who shall maintain the same in good order and condition."

By s. 48 of the Act of 1888, "Each of the two companies may and, if and so far as required by the other of them, shall use their best endeavours to obtain the annulling or

the modification to the satisfaction of the other of the two companies, of all or any contracts or agreements which may be in force at the commencement of the working union, (1) for or with reference to the use of their docks or property or any part or parts thereof by any other company or companies, or any person or persons, upon special terms." . . . "If either company fail, within six months after the passing of this Act, in obtaining the annulling or modification as aforesaid of any such contract or agreement," . . . "they shall thereafter pay half-yearly to the funds of the joint undertaking, in the first case (1) such a sum as shall represent the difference between the actual rates paid by the companies or persons the contracts with whom have not been so annulled or modified, and the current rates authorized by the joint committee for the time being." "The joint committee shall deduct half-yearly such sum out of the share of the net profits of the company liable to pay such sum, and shall carry any sum so deducted to the credit of revenue in their next half-yearly balance sheet." This section was drawn with reference to the following facts: Before the creation of the working union, the India Company, as owners of the Tilbury Docks, had entered into contracts with shipowners, whereby, in order to attract traffic into the Tilbury Docks, large rebates from the dock dues were to be allowed in respect of all ships entering those docks. Some of these contracts are still in force, and large deductions have been made, under s. 48, from the 31 per cent. of net profits which would otherwise have been payable to the India Company. By agreement between the two companies, for convenience in book-keeping, the deductions have not been made strictly in the form prescribed by the Act, but have been calculated as follows: In making out the corpus divisible between the two companies, it has been assumed that the full dues, without any rebate, have been received; then 69 per cent. of this corpus has been credited to the London Company, and

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31 per cent., after deducting the actual rebates allowed, has been credited to the India Company (a).

By s. 62 of the Act of 1888, after reciting certain agreements between the India Company and the London, Tilbury and Southend Ry. Co., whereby a minimum traffic was guaranteed to the railway company, it is enacted that "the said agreements shall, as from the date of the commencement of the working union, become and be binding on the joint committee, and full force and effect shall be given thereto, the said agreements being read and having effect as if the joint committee had been named therein instead of" the India Company, "subject to the modifications of the said respective agreements, which are set out in Part V. of the schedule to this Act, and which shall be of as full force and validity as if the same had been enacted under this Act" (b).

It is submitted on behalf of the appellants that the deductions under the several sections referred to must be made, because s. 42 [*vide supra*, p. 158] directs the joint committee to divide the net profits in the proportions of 69 and 31 per cent., "*subject nevertheless as hereinafter provided.*" To make the deductions is, consequently, not to neglect but to carry out the statutory division.

The effect of the several deductions, and the allowance of interest at $17\frac{1}{2}$ per cent. on the necessary tenants' capital

(a) No evidence was given to explain why the Act was not literally obeyed. It will be found, if the methods are tested, that they do not give identical results. The appeals were argued throughout as though the deductions made under s. 48 were *ejusdem generis* with the other deductions. It is submitted that this view is not correct; the other deductions amounted to a specific appropriation of the profits *when earned*; the deductions under s. 48 amounted to a correction of the accounts in respect of profits *which had not been earned*. In the form in which the joint committee made the division, the 69 per cent. credited to the London Company was not 69 per cent. of the actual earnings, but 69 per cent. of a fictitious sum, consisting in part of moneys which never came into the coffers of either the joint committee or the India Company.

(b) By Part V. of the Schedule, "All moneys payable to the railway company" "shall be paid by the joint committee as part of the working expenses of the working union." It seems to have been assumed at the hearing of the appeal, (1) that moneys paid under s. 62 were debited by the joint committee solely to the India Company; and (2) that they were rightly so debited.

is to show that the rateable value of the East and West India Docks is a minus quantity. This may very well be, even though the docks be carried on at a profit. [Sir P. H. EDLIN: You say these docks have no rateable value, or in other words, that no hypothetical tenant could be found to take them. Can you consistently claim a deduction from the net profits in respect of the hypothetical tenant's share?] Yes, because no hypothetical tenant would take the docks, unless, after calculating these deductions in his own mind, he found that he would be able to pay a rent. In the present case, the working expenses and the interest on the hypothetical tenant's capital, without any profit thereon, eat up all the receipts. Moreover, although interest is being paid on debentures, no dividends are being paid to the shareholders.

The following evidence was given on behalf of the appellants:—

Mr. Robert Vigers made the following valuation of the London Dock, based upon the accounts of 1889, "as controlled by the Working Union Act of 1888":—

London Dock share of total net receipts paid over by the joint committee to the London company	- - - - -	£70,443
Add proportion of maintenance, rates and taxes, losses and claims	- - - - -	26,260
		96,703
Deduct, separate expenses of		
London Company	-	£6,648
Land tax, tithes, &c.	-	2,543
Rent of dock house	-	389
Dredging	- - -	2,328
		11,908
		84,795
Less rates and taxes (6s. in £ upon an assessment of 16,478 $\frac{1}{2}$.)	- - - - -	4,943
		£79,852

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LONDON AND INDIA DOCKS	Occupiers' share -	-	-	23,328
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STEPNEY AND POPLAR UNIONS.	Repairs and renewals of chattels -	-	-	4,379
		Gross value	-	52,145
	Repairs, renewals, and insurance -	-	-	35,667
		Rateable value -	-	£16,478

Mr. Vigers arrived at the first figures in his calculation (viz., 70,443*l.*) thus: the whole of the profits payable to the London Company by the joint committee under s. 42 [*vide supra*, p. 158] were 290,295*l.* From this Mr. Vigers deducted in respect of properties separately assessed, 16,728*l.* The remainder, 273,567*l.*, Mr. Vigers apportioned among the several docks belonging to the London Company, and the Cutler Street warehouses, in proportion to the net profits appearing, according to the books of the company, to have been earned in each part of their undertaking. [The respondents denied that the books supported this apportionment as between the various docks, and also claimed to treat the profits made in the warehouses in an entirely different way, *vide infra*, pp. 186, 187, 193.] Mr. Vigers made the addition in respect of maintenance, &c., on the ground above stated (*supra*, p. 174), and arrived at the sum of 26,260*l.* by applying to the total amount expended by the joint committee under this head, the same proportions as were used to arrive at the share of the net profits attributable to the London Company. [The principle of apportionment was not disputed, but the necessity of making an addition of the expenses in this way was denied by the respondents.] The “separate expenses of the London Company, 6,648*l.*” were arrived at by taking a proportion (the accuracy of which was not disputed) of the whole of the company’s separate expenses: the respondents, however, contended that no deduction could be made in

respect of these expenses which comprised the following items:—

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Salaries	-	-	-	-	-	£1,016
Management and office expenses	-	-	-	-	-	3,808
Superannuation allowances	-	-	-	-	-	15,504
Law charges	-	-	-	-	-	838
Incidental charges	-	-	-	-	-	310
						£21,476

The respondents contended that these charges were to be treated as borne by the landlord of the hypothetical tenant. It was admitted that none of them appeared in the accounts of the joint committee; and where the same persons, for example, were directors of the separate company, and also members of the joint committee, they received distinct fees in each capacity, and the fees received as members of the joint committee were included in the working expenses of the joint committee. [As to the superannuation allowances, see further, pp. 183, 189.]

Mr. Vigers calculated his charge of 2,328*l.* for dredging by taking the average expenses for five years (1885—1889), the actual expenses in those years being respectively 3,947*l.*, 1,856*l.*, 1,229*l.*, 3,377*l.*, 1,202*l.*

Mr. Vigers allowed, for the occupiers' share, interest at 17½ per cent. on a tenant's capital, made up as follows:—

Valuation of chattels, as per engineer	-	-	£47,030
Stores (as per accountant), half-year's average	-	-	3,538
Customers' overdrawn deposit accounts	-	-	5,524
Balance at bankers	-	-	8,000
Three months' wages and expenses	-	-	66,223
Rates and taxes, say	-	-	3,000
			£133,315

The third item was thus explained: the customers of the appellants were called upon to make deposits in advance,

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which were placed to their credit, and they were then debited with the various dock charges as they became due. It appeared that, notwithstanding these deposits, there was, on the average, at the end of every month a debt of 23,000*l.* due to the joint committee, the proportion of this sum attributable to the London Dock alone being 5,524*l.* Mr. Vigers contended that as the joint committee were always out of pocket, they must be regarded as finding capital to the extent of the deficit.

The other items in Mr. Vigers' calculation were taken from the engineers' or accountant's evidence.

Mr. Vigers also proved an alternative valuation of the London Dock, "based upon the accounts of 1889, irrespective of the Working Union Act of 1888," showing a rateable value of 28,269*l.*

The following is a summary of Mr. Vigers' calculation of the East and West India Docks, "based upon the accounts of 1889, as controlled by the Working Union Act of 1888":—

East and West India Dock share of total net receipts paid over by the joint committee to the India Company - - - -	£48,885
Add proportion of maintenance; rates and taxes; losses and claims - - - -	28,409
	£77,294
Deduct separate expenses of India	
Company - - -	£10,000
Land tax and tithes - -	87
Dredging - - -	10,959
Rent of dock house - -	421
	21,467
	£55,827
Less rates and taxes upon an assessment of	
£ - - - - -	
	£

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Brought forward - - - £						
Occupiers' share - - - - -	-	-	-	-	39,602	LONDON AND INDIA DOCKS
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Repairs and renewals of chattels - - -	-	-	-	-	16,993	
Gross value - - - £						
Repairs, insurance, and renewals of heredita- ments - - - - -	-	-	-	-	51,389	
Rateable value - - - £						

Mr. Vigers arrived at the first figures (48,885*l.*) in his calculation thus: the 31 per cent. of net profits payable to the India Company under s. 42 in the year 1889 was 130,423*l.* The deduction made (as in the case of the London Dock) in respect of property separately assessed was 7,515*l.*, leaving a sum of 122,908*l.*, from which Mr. Vigers made the following further deductions:—

Rent paid under s. 47 [<i>vide supra</i> , p. 174] -	£17,800
Rebates charged against the India Company under s. 48 [<i>vide supra</i> , p. 174] - -	22,062
Payments to London, Tilbury and Southend Railway Company under s. 62 [<i>vide supra</i> , p. 176] - - - - -	4,199
	<u>£44,061</u>

[Each of these three deductions was disputed by the respondents.]

Mr. Vigers having thus arrived at a sum of 78,847*l.*, representing the net profits of the whole of the property of the India Company, apportioned it thus:—

East and West India Docks - 62 per cent. =	£48,885
Tilbury Docks - - - 17 per cent. =	13,404
Commercial Road Warehouses - 21 per cent. =	16,558
	<u>£78,847</u>

This apportionment was made by deducting from the gross receipts earned in the several parts of the India

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Company's property certain items of expenditure in each part, in order to compare the proportionate net profits earned in each part. It was contended by Mr. Vigers (and denied by the respondents) that the failure to take into account the *whole* of the expenses made no difference to the relative proportion of net profits to be attributed to each part.

The addition for "maintenance, rates and taxes, losses and claims" was made for the same reason as in the case of the London Dock, and the actual amount was arrived at on the same principles *mutatis mutandis* (see pp. 174, 178.)

[The respondents disputed the necessity of any addition under this head: *vide infra*, pp. 185, 189.]

The separate expenses of the India Company comprised items of a similar character to those of the London Company (*vide supra*, p. 178), and the amounts were calculated on the same principles as in the former case.

The dredging expenses were calculated on an average of five years (1881—1885), the amounts being 7,266*l.*, 9,891*l.*, 12,073*l.*, 12,556*l.*, 13,009*l.* Mr. Vigers took these years because, in 1886, 1887, and 1888, the accounts of the India Company did not divide the dredging expenses of the Tilbury Docks from the East and West India Docks. It was, however, admitted at a later stage of the hearing that the average taken by Mr. Vigers was considerably too high.

For the occupiers' share, Mr. Vigers allowed interest at $17\frac{1}{2}$ per cent. on a tenants' capital of 226,300*l.*, which was made up on the same principles as in the case of the London Dock (*vide supra*, p. 179), save that, inasmuch as the entire calculation brought out the rateable value at a minus quantity, Mr. Vigers included nothing under the head of "Rates and Taxes" in making up the tenants' capital. The repairs and renewals, &c. of chattels, and of the hereditament, were taken by Mr. Vigers from the engineers' and accountant's evidence.

A question arose, on Mr. Vigers' evidence, whether the cost of dredging must be regarded as part of the hypothetical tenant's working expenses, or as part of the landlord's "expenses necessary to maintain the hereditament in a state to command the rent" to be deducted from the gross value under s. 4 of the Valuation (Metropolis) Act, 1869. It was admitted that the expenses of dredging (apart from the question of amount) must be deducted from the gross profits at some stage in the calculation; and it was further admitted that it was immaterial whether the deduction was made as Mr. Vigers had made it, or as part of the statutory deductions from the gross value. But, in making up the tenants' capital, Mr. Vigers had included the steam-dredgers as part of the tenants' plant, and had included the wages and expenses of dredging in the "three months' wages and expenses," for which the hypothetical tenant must provide capital. [The arguments upon the point are set out *infra*, pp. 189, 200.]

The appellants called two engineers, Mr. F. E. Duckham and Mr. Robert Carr, to prove the amount of repairs and the value of the tenants' plant; both witnesses valued all plant at cost price, but admitted that 20 or 25 per cent. depreciation must be allowed to arrive at present value. The appellants' accountant, Mr. Hornblower, proved the figures furnished to Mr. Vigers.

Poland, Q.C., for the Stepney Union: Superannuation allowances which are in the nature of deferred pay may properly be deducted. But, although the accounts of 1889 deal with the first year's working under the joint committee, and although 6,677*l.* is charged for superannuation allowances in the accounts of the committee, Mr. Vigers seeks to deduct a further sum (under the head of "Separate Expenses") in respect of allowances granted before the creation of the joint committee. This is a matter which does not concern the present tenant. It is obvious that,

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on the amalgamation of the two companies, some of the then existing officers were no longer required.

[The rest of the argument, which dealt almost entirely with questions of amount, is omitted.]

Mr. Edward Ryde, who was called on behalf of the parishes in which the London Dock was situated, made a valuation on the assumption that the joint committee were the tenants of the two systems of docks. He accepted the decision of the Court that the statutory division of profits was to be the "controlling criterion" of rateable value, but regarded that division as affecting only the apportionment of the rateable value of the entire undertaking worked by the joint committee, and considered that it was no reason for departing from the ordinary method of ascertaining the rateable value of the entire undertaking.

The following is a summary of his valuation :—

Gross receipts	-	-	-	-	£1,604,422
Working expenses	-	-	£1,038,937		
Rates and taxes at 5s. in the £ on an assessment of 322,767 <i>l</i> .	-	-	80,692		
					1,119,629
			Net receipts	-	484,793
Occupiers' share—					
Interest at 17½ per cent. on a tenant's capital of 420,000 <i>l</i> .	-	-	-	-	73,500
Gross value	-	-	-	-	411,293
Maintenance, renewals, and insurance	-				88,526
			Rateable value	-	£322,767

In this calculation, Mr. Ryde included the receipts and expenditure of all docks and warehouses in the hands of the joint committee, but did not include rents received by the committee in respect of certain properties which were separately assessed. With the exception of the item for

rates and taxes, all the other figures in his valuation were taken from the accounts of the joint committee. He estimated the amount of tenants' capital thus: Sect. 49 of the special Act of 1888 provides as follows:—"Whereas the two companies respectively have provided working capital out of moneys from time to time coming to their hands on account of past earnings, but under the provisions of this Act all moneys earned by each company prior to the commencement of the working union are vested in and belong to the respective company: therefore, in order to provide working capital for the purposes of the working union, the joint committee may from time to time borrow on the security of the revenue of the joint undertaking any sum or sums of money not exceeding in the whole 300,000*l.*," at interest, &c. Mr. Ryde estimated that the old plant in use at the creation of the joint committee, and transferred to them, was worth 150,000*l.*: he then assumed that the committee had exercised their power to borrow the full amount of 300,000*l.* (although in fact not more than 250,000*l.* had been borrowed); he also assumed that part (say 30,000*l.*) of the sum borrowed would be used to replace old plant, and thus arrived at a total of 420,000*l.* The stores were taken over under s. 41, set out on p. 158, *supra*; it appeared that no valuation of these stores was ever made. In dealing with the working expenses and the maintenance, Mr. Ryde had taken the actual figures in the accounts for 1889, and not an average, on the ground that if the percentage of the actual profits paid to the London Company in a particular year were made the "controlling criterion" in estimating the rateable value, it would be inconsistent not to take the actual expenditure of that year. Having ascertained the rateable value of the whole of the joint committee's property to be 322,767*l.*, Mr. Ryde regarded 69 per cent. of that amount (or 222,709*l.*) as representing the rateable value of the London Company's property (*i. e.*, the London, the St. Katharine's, the Victoria, and

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the Albert Docks, and the Cutler Street warehouses). The witness next proceeded to calculate the rateable value of the London and the St. Katharine's Docks and the Cutler Street warehouses together, on the "parochial earnings principle," *i.e.*, he deducted from the total gross receipts in respect of the last-mentioned properties, the total working expenses in respect of the same; and, making an exactly similar calculation in the case of this part of the London Company's property as he did in the case of the entire undertaking in the hands of the joint committee (*vide supra*, p. 184), he arrived at a rateable value of 152,416*l.* for that part. Making a third calculation in a similar way, he showed a rateable value of 108,326*l.* for the Victoria and Albert Dock together; thus making the aggregate value of the two parts of the London Company's property 260,742*l.* But as he had shown that 69 per cent. of the rateable value of the whole undertaking in the hands of the joint committee amounted only to 222,709*l.*, he contended that the rateable value of each of the two parts of the London Company's property should be reduced proportionately, giving the following result:—

Rateable value, taking the statutory division
of profits as the "controlling criterion":—

London Dock, St. Katharine's Dock, and Cutler Street warehouses - - -	£130,184
Victoria Dock and Albert Dock - - -	92,525
	£222,709

From the total of 222,709*l.*, Mr. Ryde deducted 9,619*l.*, being the assessments of the Cutler Street warehouses entered in the valuation list, and not appealed against; leaving for the four docks belonging to the London Company 213,090*l.* This sum he divided among the same four docks in proportion to the gross receipts in each dock, the share attributable to the London Dock being 72,292*l.* Deducting therefrom the actual assessment on that part of the dock which was in the parish of St.

Botolph Without, there remained 71,853 <i>l.</i> to be divided among the parishes in which appeals were entered (in proportions upon which the appellants and the several respondents had agreed) as follows:—					1892.
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St. George-in-the-East	-	-	-	-	£42,752
St. John, Wapping	-	-	-	-	17,245
St. Paul, Shadwell	-	-	-	-	11,856
					£71,853

Mr. Ryde explained that he thus dealt with the Cutler Street warehouses: he had, in the first place, included all the receipts earned there among the gross receipts of the joint committee, because he regarded the earnings in the warehouses as essentially connected with the occupation of the docks. He argued that it would be wrong to rate the warehouses with reference to profits made there, because a warehouse could only be rated on the rental value of similar buildings. He had, therefore, treated the warehouses in the same way as the works of a gas company are treated, and had deducted the amount of the actual assessments thereof from the total rateable value of the whole undertaking.

F. M. White, Q.C. (A. M. Bremner with him), for the Poplar Union: The Court are asked to find the rateable value of the East and West India Docks in one sum, as the two parishes in the Poplar Union, in which the docks are situated, have agreed with the appellants as to the apportionment of the rateable value.

The following are the points to be noticed in Mr. Vigers' calculations:—the deduction for property separately rated is admitted, but the deductions for payments under ss. 47, 48, and 62 [*vide supra*, p. 181] are disputed. The effect of s. 47 [set out above, p. 174] is that, as between the two companies, the India Company pays the rent of the Commercial Road warehouses. The payment is made after the net

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profits are ascertained and divided under s. 42 (*vide supra*, p. 158), and it is a payment which would not form part of the burden falling on the hypothetical tenant. The rent of the rateable hereditament is not to be deducted in ascertaining the value of the rateable hereditament. Again, the title of the hypothetical tenant's landlord is immaterial, whether it be freehold or leasehold: in ascertaining the rateable value of a house, no deduction from the annual rack rent can be claimed for the ground rent. In *R. v. Woking* [1835], 4 A. & E. 40, it was held that in rating a canal no deduction could be claimed for payments made to certain proprietors of land nor to millowners for loss of water. Lord Denman said (*Ib.* at p. 51): These payments "are in truth nothing more than rent-charges: they do not affect the value of the occupation or the rent which a tenant would give, but only show amongst whom and in what proportion the rent or profits are to be divided." In the present case the two companies are in the position of partners, one of whom brings in leasehold premises, while the other brings in freeholds to carry on the partnership business. To put the partners on an equal footing, the rent of the leasehold is paid by the partner bringing it in; but such a payment does not affect the annual value of the property to the hypothetical tenant. Suppose, instead of taking a lease, the premises had been bought and the buildings erected with borrowed money; the interest thereon could not be deducted in ascertaining the rateable value. It is true that by s. 47 the payment of the rent is to be made by the hand of the joint committee; but that provision is inserted to insure that the rent shall be paid, and that the landlord may not enter for non-payment and so prejudice the partnership business. Next, as to rebates under s. 48 [the section is set out above, at p. 174, where the method of keeping the accounts is stated]: these also are landlord's and not tenant's expenses. Under s. 48 the India Company might have annulled the contracts for allowance of rebates; had they succeeded in doing so,

e. g., in consideration of the payment of a lump sum to the shipowners, the present claim for deduction could not have arisen, nor could any claim for deduction on account of the consideration money have been allowed. But even if it be admitted that these expenses are tenant's expenses, then they are expenses falling on the tenant of Tilbury Docks. It is admitted by the appellants that the contracts for rebate were made in order to attract traffic to Tilbury ; whenever it is possible, as it clearly is here, expenses should be localized, and charged to that hereditament in respect of which they are incurred. The payment under s. 62 is similar to the other deductions claimed. The appellants have had a benefit from the deductions claimed here, in that Tilbury Docks (which earn so little in consequence of the contracts for rebates) are, on that account, rated only at 1,158*l.*, though they occupy 220 acres of land and 70 acres of water. For superannuation allowances, 6,667*l.* is allowed in the accounts of the joint committee, of which it appears that 4,100*l.* is paid to officers whose retirement had reference to the working union. It may not be proper to throw all the allowances previously granted on the separate companies ; the true principle is to allow an average, and for this the payment made by the joint committee is sufficient. The deduction claimed by Mr. Vigers for land tax (*supra*, p. 180) cannot be supported ; it is a landlord's tax. [Sir P. H. EDLIN : You need not cite authority for that.] Dredging is a landlord's duty, and the value of the dredging plant cannot be included in making up the tenants' capital, because the plant must be supposed to belong to the hypothetical landlord, and to be provided out of the rent. [Sir P. H. EDLIN : We think that dredging is a landlord's charge.] As to the amount for dredging and for repairs generally, Mr. Vigers claims an additional sum beyond the actual expenditure ; but under s. 42 (*supra*, p. 158) it must be assumed that the joint committee have done all that is necessary. [Sir P. H. EDLIN : Would the hypothetical tenant look exclusively at the expenditure of one

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year?] If the receipts and net profits of a particular year are made the basis of calculation, the expenditure of that year on repairs, &c., must be regarded. The joint committee seem, from the accounts, not to have expended or set aside any renewal fund, though they should have done so; and the respondents are willing to allow a deduction under this head. As to the tenants' capital [see Mr. Vigers' evidence, *supra*, pp. 179, 182], the chattels are taken at cost price; it has been expressly decided that they must be taken at their present value in *R. v. North Staffordshire Ry. Co.* [1860], 3 Ell. & Ell. 392. The appellants' witnesses admitted that the deduction for depreciation would be 25 per cent., but the respondents will contend that it should be 33 per cent. Further, it is submitted that too much is included under the head of chattels. Anything that is part of the rateable hereditament cannot be part of the tenants' capital. In *R. v. Southampton Dock Co.* [1851], 14 Q. B. 587, it was held that buildings are "to be assessed according to their existing value as combined with the machinery" attached to them for the purposes of trade, "without considering whether the machinery be real or personal property, or whether it be liable or not to distress, or seizure under a *fieri facias*, or whether it would go to the heir or executor, or at the expiration of a lease, to the landlord or tenant." This decision was followed in *R. v. Lee* [1866], L. R. 1 Q. B. 241; in *Laing v. Bishopwearmouth* [1878], 3 Q. B. D. 299; and lastly, in *Tyne Boiler Works v. Overseers of Longbenton*, Ryde's Rat. App. (1886—1890) 241; 18 Q. B. D. 81: in the latter case it was expressly decided that fixture or attachment to the freehold is not necessary to make a thing rateable. But here Mr. Vigers includes amongst the tenants' property machinery which is described by himself as "fixed." The hydraulic cranes which are moveable are necessarily connected with the fixed pipes before they can be used. They are constructed to move along a pipe let into the ground, and in the pipe there are set at intervals valves with which

the cranes can be connected. The movement is for change of user, not for use while in motion. In *Laing v. Bishopwearmouth*, 3 Q. B. D. at p. 302, amongst the machinery included as part of the rateable hereditament, was "a traversing crane carried on a pair of wrought-iron girders." In the present case the vats and the "vault carvings" [described *infra*, p. 194] are clearly part of the rateable hereditament; and they "make the premises fit as premises for the purpose for which they are used," and so are within the rule laid down in the *Tyne Boiler Works Case* (*ubi supra*). The vaults would be unfit for use without the vault carvings. Stores kept for the purpose of repairing the hereditament are landlord's stores (a). The overdraft on the customers' deposit account must be struck out altogether (*vide supra*, p. 179); the deposits go to reduce the necessity for the allowance of three months' expenses as part of the tenants' capital; for that allowance is made on the assumption that the dock companies have to give three months' credit to their customers. It is admitted that rates and taxes must be regarded as part of the annual expenditure, and that on the amount of the rates and taxes for one quarter, the same rate of interest is to be allowed as on the rest of the tenants' capital.

Mr. William Eve, on behalf of the Poplar Union, made the following valuation of the East and West India Docks, based on the accounts of 1889, as controlled by the Special Act of 1888 (b) :—

31 per cent. of net profits	-	-	-	£130,423
Add, for property and income tax and interest on mortgage debentures, 31 per cent. on 7,260 <i>l.</i> , already deducted	-	-	-	2,251
Carried forward	-	-	-	£132,674

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(a) Compare the arguments upon this point in *Gas Light and Coke Co. v. City of London Union*, *infra*, pp. 219, 222, 223.

(b) This valuation must be compared with Mr. Vigers' valuation of the same docks, *supra*, p. 180.

1892.	Brought forward - - -	£132,674
LONDON AND INDIA DOCKS v. STEPNEY AND POPLAR UNIONS.	Rates payable on the assessments appealed against - - -	£18,163
	Rates actually paid in 1889 -	13,637
		4,526
		128,148
	31 per cent. of rents separately assessed -	9,005
		119,143
	31 per cent. of rent paid for Fenchurch Street warehouses - - - - -	1,774
		120,917
	Renewal of tenants' plant - -	£1,500
	Tenants' share:	
	17 per cent. on £126,000 =	21,420
	Landlord's renewal fund - -	8,500
		31,420
		£89,497
	Indirectly productive portion:	
	Commercial Road warehouses, &c. - -	9,946
	Rateable value of Tilbury and East and West India Docks - - - - -	£79,551
	The rateable values stated in the respective valuation lists were:—	
	Tilbury Docks - - - - -	£1,158
	East and West India Docks - - -	56,333
		£57,491

Mr. Eve, in calculating the net receipts, disallowed the charge for interest on mortgage debentures, because those were created for the purpose of providing working capital (*vide supra*, p. 185); if, therefore, the interest thereon was to be treated as a deduction, Mr. Eve claimed to deduct the amount raised by debentures from the tenants' capital, and he pointed out that whereas 4 per cent. only

was paid on the debentures, he had allowed 17 per cent. as tenant's profit on the whole of the tenant's capital. Mr. Eve disallowed the deduction in respect of the rent of the Fenchurch Street warehouses, on the ground that they were no longer occupied by the appellants, and that the rent would not have to be paid again. He treated the warehouses as indirectly productive of profit.

Mr. Eve calculated the amount of the tenant's capital necessary to carry on the East and West India Docks thus :—

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Tenant's plant :

Value taken by Mr. Vigers-	-	-	-	£152,630	
Deduct for items which enhance the value of the rateable hereditament, viz., lathes and saws fixed, hydraulic cranes, 38 travellers, 17 vats (8 fitted with agitators), vault carvings				£26,993	
Deduct items relating to landlord's repairs :					
Dredgers and mud barges-				14,600	
Deduct for one refrigerating hulk not required under new administration by joint committee	-	-	-	5,625	
					47,218
					105,412
Deduct, to obtain present value, 33½ per cent.	-	-	-	-	35,137
					£70,275
Stores, as taken by Mr. Vigers				£6,196	
Deduct for landlord's stores, say ¼	-	-	-	1,549	
					4,647
Balance at bankers	-	-	-	-	6,000
Carried forward -	-	-	-		£80,922

1892.	Brought forward - - -	£80,922
LONDON AND INDIA DOCKS	One year's working expenses -	£204,189
v.	Deduct for :	
STEPNEY AND POPLAR UNIONS.	Dredging (landlord's expense) -	£10,959
	Separate expenses	10,069
		<u>21,028</u>
	One-quarter of £183,161 =	45,790
	Rates and taxes :	
	Say $\frac{1}{4}$ of £18,163, the amount payable on assessments appealed against - - -	4,540
		<u>£131,252</u>
	Deduct for deposit accounts and special deposits :	
	Proportion attributable to East and West India Docks (divided according to re- ceipts of the several docks) of £64,950, the total amount in December, 1889, say $\frac{1}{6}$ - - - - -	10,825
		<u>£120,427</u>

As to the items included under "tenant's plant": Mr. Eve said the hydraulic cranes ran on rails laid at a gauge of 4 feet $8\frac{1}{2}$ inches, and could not travel beyond the limits of the rails. The vats were similar to the large vats used by brewers, which were always taken into account in rating a brewery (these vats varied in size from 200 to 5,000 gallons, and some of them contained machinery, worked by "steam agitators," for blending spirits). The "vault carvings" consisted of pieces of iron, 7 feet or 8 feet long, which were in most cases let into the ground about 5 inches and projected above the surface of the ground 1 inch: they were laid in the vaults to an exact gauge, like a tramway, and the tops were about 6 inches wide. On them casks were rolled. [The appellants ultimately abandoned the contention that the "vault carvings" could

be treated as part of the tenant's plant.] Mr. Eve considered that the allowance for depreciation of tenant's plant of $33\frac{1}{3}$ per cent. on cost price was insufficient if, as the appellants' witnesses contended, the necessary sinking funds were far greater than the actual expenditure. The rate of interest on tenant's capital ought, the witness considered, to diminish or increase, according as the occupier had a more or less strict monopoly: and it could not be determined by a rule of thumb. With regard to the apportionment of the 31 per cent. of net profits paid to the India Company, as between the Tilbury Docks and the East and West India Docks, Mr. Eve considered that, although the Tilbury Docks were carried on at a loss, yet they would still have a competitive value if they were in the hands of a rival company; he admitted, therefore, that some part of the 31 per cent. should be attributed to the Tilbury Docks, but could not specify what part. He pointed out that his valuation of 79,551*l.*, as compared with the actual assessment amounting to 57,491*l.*, gave a margin of 22,061*l.*, to represent the price which might be paid to get rid of the opposition of the Tilbury Docks.

Mr. William Marshall made the following valuation of the East and West India Docks, based on the profits of 1889, as controlled by the Special Act of 1888:—

Profits earned by East and West India Docks,	£
and warehouses - - - - -	130,423
Deduct 31 per cent. of properties separately assessed - - - - -	9,665
	120,758
Add rates paid on East and West India Docks in 1889 - - - - -	13,637
Net profits, plus rates, divisible between landlord and tenant - - - - -	£134,395

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1892.	Brought forward - -	£134,395.
LONDON AND INDIA DOCKS v. STEPNEY AND POPLAR UNIONS.	Tenant's share :— 17½ per cent. on working capital of £137,000 - - - -	£23,975
	Sinking fund for renewal of tenant's plant - - -	1,520
		25,495
	Gross value, plus rates - - - -	108,900
	Deduct landlord's renewal fund -	£9,500
	Extra repairs and dredg- ing - - - -	4,375
		13,875
	Rateable value, plus rates - - - -	95,025
	Deduct rates calculated on assessments ap- pealed against - - - -	18,163
	Rateable value of East and West India Docks and warehouses - - - -	76,862
	Deduct rateable value of warehouses (a) -	11,178
	Rateable value of East and West India Docks	£65,684

In this calculation, Mr. Marshall regarded the whole of the 31 per cent. of net profits paid to the India Company as attributable to the East and West India Docks and warehouses, and nothing as belonging to the Tilbury Docks, which were carried on at a loss. He admitted, however, that the actual assessment at Tilbury, which was put at a nominal sum of 1,158 $\frac{1}{2}$ %, might properly be deducted. He had at one time advised an increase of the assessment of the Tilbury Docks to 10,000%; but the appellants having objected thereto, and having shown that the docks were carried on at a loss, he had advised the assessment committee to grant a reduction to 1,158%. He regarded the warehouses as indirectly productive of profit.

(a) The difference in the amounts deducted by Mr. Eve and Mr. Marshall respectively, as the rateable value of the warehouses, is due to their having taken the actual assessments thereon at different times.

Mr. Marshall calculated the tenant's capital for the East and West India Docks thus:—

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Total expenses in those docks, including rates - - - - -	£217,471
Deduct maintenance - - - - -	17,500
	£199,971

Three months' expenses, to meet all outgoings	£49,993
Deduct for proportion of average amount of deposits in hand, attributable to these docks - - - - -	11,941

Cash required by tenant to meet outgoings -	£38,052
Present value of tenant's plant and working gear - - - - -	83,758

Stores in hand, as per appellants' evidence - - - - -	£6,196
Deduct for landlord's stores, say one-fourth - - - - -	1,549

	4,647
Balance at bankers for contingencies - - -	5,000
	£131,457

Deduct for dredging plant, and one dis-used refrigerating hulk - - - - -	14,708

	£116,749
Add tenant's capital for working warehouses	18,912

Total capital for East and West India Docks and Warehouses - - - - -	£135,661
Say £137,000 to allow for rates on increased assessments.	

In calculating the present value of the tenant's plant, Mr. Marshall deducted one-third from the prime cost. He also excluded the fixed machinery, the cranes, vats, and "vault carvings" above referred to (*supra*, p. 194). The buildings were specially prepared to receive the machinery; the warehouses containing the vats would not be rum warehouses without the vats; and the cranes and

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vault carvings were essential to the user of the premises. All of these would therefore be taken into account in valuing the premises on which they stood. The witness admitted that he had hitherto always treated the dredging plant as belonging to the tenant, and had deducted it in the present case in obedience to the directions of counsel.

F. M. White, Q.C., for the Poplar Union (in which the East and West India Docks are situated): As to the apportionment of value to the Tilbury Docks. They are a losing concern; it may be (as in *R. v. London & North Western Rail. Co.* [1874], L. R., 9 Q. B. 134), that competition would induce a tenant to pay a rent higher than the profits would warrant, and so a losing concern may have a rateable value; but this can only be where competition is possible, and in the present case the special Act of 1888 has put an end to competition. The appellants cannot consistently claim that in this appeal there shall be attributed to the Tilbury Docks a higher rateable value than that which has been fixed on their own objection at Tilbury. As to the deductions claimed to be made from the net profits paid to the India Company (*vide supra*, p. 181): a close analogy is found in *R. v. Sherford* [1867], L. R. 2 Q. B. 503, in which it was held that in rating a tithe-rentcharge, no deduction could be allowed in respect of the salary of a curate whose services were necessary in addition to those of the incumbent himself; and it was shown that the principle of *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, is, that all property capable of beneficial occupation is to be assessed, irrespectively of the amount of remunerative value to the particular occupier; and that this principle was inconsistent with the *Hackney Case* [1858], E. B. & E. 1, in which a deduction for the salary of a curate was allowed; and Mellor, J., pointed out (L. R. 2 Q. B., at p. 511) that “the fallacy consists in confounding the rateable value to the poor rate with the remunerative value to the incumbent.” In the present

case, the statute does not, by these deductions, diminish the profits, but merely appropriates them in a particular way when made.

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Little, Q.C., for *St. George-in-the-East* (in which part of the London Dock is situated) : The argument on behalf of the Poplar Union, based on *R. v. Sherford* [1867], L. R. 2 Q. B. 503, and *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, tends to show that the rating of the several docks, in the present appeals, should be decided on the parochial principle, and not with reference to the distribution of profits, when made, between the two dock companies.

Balfour Browne, Q.C., for the appellants in reply : It cannot be right to allow as deductions just those payments which are made by the joint committee : because, if, by arrangement, the Act of 1888 had directed that the repairs of each dock should be borne by the company to which it belonged, it would follow that the cost of repairs could not be deducted from the receipts. Such a result would be inconsistent with the definition of "rateable value." The superannuation allowances paid by each company were proper deductions before 1888, and are therefore proper when the joint committee take over the management. [Sir P. H. EDLIN : We cannot regard the joint committee as taking over the same going concern formerly in the hands of the two companies. The Act of 1888 has made one occupation instead of two.] It is admitted that in dealing with directors' fees, the mere distribution of dividends may be regarded as the landlord's duty ; and, as a principle, fees paid in respect of such distribution are not proper deductions (a). But here the directors of the separate companies do perform some duties connected with the management of the docks ; e.g., the payment of the

(a) This point was also discussed in *Gas Light and Coke Co. v. City of London Union*, *infra*, p. 222.

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superannuation allowances. Dredging is not merely necessary in order to maintain the hereditament: it is also necessary in order to keep the docks open from day to day. In rating a railway, the ordinary daily repairs to keep the hereditament in working order (*e.g.*, the mending a broken fish-plate), are always included in the tenant's working expenses. If the occupier of a dock did not dredge, ships could not come in, and no dues would be earned: whereas the landlord's rent is safe whether the ships can get in or not. Dredging the mud in the dock is analogous to sweeping out the rubbish which is dropped on the floors of the warehouses adjoining those docks: and both are the duties of the tenant. In *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, the docks were carried on by a Board, *not for the sake of profit*: and the decision was that, although the net receipts were by statute devoted to certain specific purposes, the docks were rateable. In the present case rateability is admitted, and the question is whether deduction directed by the statute which controls the working, affects the rateable value. The rebates paid in respect of Tilbury Docks [*vide supra*, p. 175] are made in many instances under contracts which bind the ship-owners to bring their ships to those docks: it cannot be right to take into account the benefits arising under such contracts, and at the same time to exclude the burdens which form the consideration therefor. As to the items to be included in tenant's plant, in making up the tenant's capital: the portable and travelling cranes run upon rails, but are no more fixed to the freehold than is a locomotive engine which can run from London to Liverpool. Both the cranes and the locomotive are strictly limited by the extent of the rails. It was said that a hydraulic crane can only be used when attached to the freehold, and therefore must be regarded as part of it: the same thing might be said of a fire-engine. As to the method of valuing the warehouses: in *R. v. West Middlesex Waterworks Co.* [1859], 1 E. & E. 716, the stations and dead mains of the company

were said to be indirectly productive of value, because they earned nothing and no one would pay a rent for them: but persons are willing to pay a rent for warehouses, though they have no connection with docks. In the present case it might as well be said that the docks were indirectly productive of profit to the warehouses. The profits made in the warehouses can be, and ought to be, separated from the dock earnings. The docks and warehouses are in a position analogous to that of a ferry worked with a railway.

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Cur. adv. vult.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): There is a question of law upon which the appellants may ask me to state a case, arising out of the previous obligations of the several docks, before the passing of the Act of 1888. It was contended that the obligations which they had previously incurred are of such a nature, that having regard to the Act of Parliament, we ought to take them into consideration in assessing the rateable value. I have come to the conclusion that the appellants are not entitled to any deductions in respect of those obligations, and that it would be contrary to the Parochial Assessment Act for us to make any allowance whatsoever in respect thereof. This is the conclusion which I have arrived at, adverse to the appellants. The obligations are very large, but it seems to me to be absolutely inconsistent with what we have to consider under the Valuation (Metropolis) Act, 1869, to take them into consideration at all. No doubt there has been what may be called a speculative rivalry between these several companies, and (although the phrase does not sound very polite), I was about to say, each being desirous of putting an end to the existence of the others, for the purpose of doing so, one company made contracts with various shipowners, extending over long periods of time, for the purpose of inducing them to bring their ships into this or that dock, and binding themselves

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not to take them into their opponents' docks. All that might have been done fairly in view of the state of affairs existing at that time; but the very object of the Act of Parliament was to put an end to that ruinous competition; and to say that the expense to which the companies were thereby subjected, and which may have resulted in continuing obligations upon them, should now be taken into consideration for the purpose of ascertaining the lettable value at the present time, seems to me to be altogether inconsistent with the plain intention of the Valuation (Metropolis) Act, 1869. With regard to those items being elements in the account, my judgment will be adverse to the appellants. Another question was as to the appellants being entitled to bring into the account of profit and loss the retiring allowances which had been agreed upon prior to the establishment of the committee; and the question arose as to whether retiring allowances made under an agreement made since the establishment of the committee, had to be taken into consideration. As to the former, for the reasons in a great measure which I have already stated with reference to the other question, our judgment would be adverse to the appellants. With regard to the latter portion of such allowances, it seems to me that they may have been reasonably agreed upon in view of the economical carrying on of the working of the business; and as to those, I think the appellants would be entitled to have them brought into the account. Our judgment would therefore be as to that portion of the allowances in favour of the appellants.

With regard to the dredging, I think the appellants are entitled to the whole cost of the dredging. There appears to have been some confusion as to whether these should be regarded as landlord's or tenant's expenses, but I do not think that any such distinction can be usefully pointed to in this case. They appear to me to come under the definition of "other expenses," distinct from repairs—other expenses which the tenant is entitled to have deducted

from the gross value in arriving at the rateable value. Ultimately, unless the dredging were done, the accumulation of silt and mud would destroy the hereditament altogether. It is a reasonable expense, that from time to time dredging should take place for the purpose of preventing such destructive accumulation, and therefore as to the dredging, I think the appellants are entitled to have the whole cost allowed.

As to the warehouses, I am clearly of opinion that they must be separately and distinctly the subject of valuation, and that therefore they are not properly an item to be brought into this account.

The decisions upon these several points of law will possibly necessitate some alteration in the figures, but upon the accounts so far as I am able to compare the figures with the results upon the several questions as to which I have expressed my opinion, I have come to the conclusion that the appellants will take nothing by these appeals.

The case was adjourned to enable the parties to apply these decisions to the figures, and after the adjournment the Court were again asked for a further decision on certain questions of principle. The appellants also asked for a case for the opinion of the Queen's Bench Division.

The CHAIRMAN (Sir P. H. Edlin): I am willing to have a case stated upon the question as to the allowance of a deduction, for rebates paid under the so-called improvident contracts, under s. 48 of the Act of 1888 [*vide supra*, p. 174]. I do not feel inclined to grant a case as to the question arising under s. 47: and we do not allow any deduction for payments made under ss. 47 and 62. These are payments made under obligations created before the passing of the Act of 1888. As to the directors' fees: we do not think that the fees paid to the directors of the two separate companies should be brought into account:

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but we have allowed as a deduction all the fees paid to the directors for managing under the joint committee. We disallow the fees paid after the 69 and 31 per cent. of the profits are appropriated [*vide supra*, p. 179]. We do not think it necessary for us to work out the amount of the tenant's capital, and if we think the respondents are within the mark, we shall not go into all the questions raised: as to the chattels forming part of the tenant's capital, we think their present value, and not their prime cost, must be taken.

[The exact amounts of the several assessments questioned in these appeals were ultimately determined by the learned chairman sitting *in camera*.]



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 May 25;
 July 30, 31;
 Aug. 1, 7;
 Oct. 15, 16;
 Nov. 5, 6, 7,
 9, 12, 13, 14,
 18;
 Dec. 23.
 1892.
 Feb. 8, 19,
 26;
 March 12, 14,
 23;
 Nov. 1, 30.

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Gas Company—Accounts—For what Year to be taken—Tenant's Capital—Percentage on—Landlord's and Tenant's Charges—Parliamentary Expenses—Directors' Fees—Working Expenses—Superannuation Allowances—Directly and Indirectly Productive Mains.

The overseers, on or before June 1st, 1890, duly made and deposited a quinquennial valuation list, which was revised by the assessment committee. On the commencement of the hearing of the appeal in March, 1891, the appellants tendered in evidence a calculation of rateable value based on their accounts for 1889.

Held, that the calculation should have been based on the accounts for the year ending June 30th, 1890, inasmuch as those accounts might have been used by the assessment committee in revising the list: but that it was open to the appellants to refer to receipts and expenditure subsequent to June 30th, 1890, as showing an ascending or descending scale.

Apportionment of costs of appeals relating to the mains of a gas company extending through several parishes made where the appellants succeed in some parishes and fail in others.

The following questions discussed :—

- (1) What is the proper rate of interest on tenant's capital ?
- (2) Whether repairs to the rateable hereditament can be regarded as a charge falling on the hypothetical tenant ?
- (3) Whether directors' fees, or the expenses of promoting or opposing bills in Parliament can be so regarded ?
- (4) Whether superannuation allowances paid to officers retired in consequence of the amalgamation of several companies can be treated as part of the working expenses ?
- (5) On what principle are directly and indirectly productive mains to be distinguished ?
- (6) Whether an unexpected increase in expenditure causing a diminution of profits made up by drawing upon a reserve fund can be regarded as chargeable against the fund represented by the allowance of $2\frac{1}{2}$ per cent. interest on tenant's capital for "risks and casualties" ?

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APPEALS relating to gasworks, mains, and pipes, extending through 128 parishes, of which 106 were situated within the City of London Union.

The several respondents appeared separately, and in many instances by separate counsel and solicitors, but the appeals were heard together.

Littler, Q.C., for the appellants: The first question is, what year's accounts are to be the basis of calculation? The accounts are made out half-yearly, to June 30th and December 31st, and are published within three weeks of those dates. The valuation list was made by the overseers on or before June 1st, 1890, and was revised by the assessment committee in the autumn of that year: see Valuation (Metropolis) Act, 1869, s. 42. The appellants have based their calculations on the accounts for the year ending December, 1889, which were the last figures before the overseers. [Sir P. H. EDLIN: The assessment committee could have used the accounts up to June, 1890]. The appellants have followed the rule laid down by this Court in *South Metropolitan Gas Co. v. Greenwich*, *supra*, p. 56. There were strikes during the year 1889.

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1891. Sir *E. Clarke*, S.-G., for the City of London Union:
 GAS LIGHT & COKE Co. v. CITY OF LONDON UNION.
 The appellants have already given notice of a claim to be entered in a supplemental list. The respondents have based their calculations on the accounts for 1889, but they admit that neither the assessment committee nor this Court are absolutely bound by those accounts. They do not object to suggestions of probable increase of expenditure.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The Court desire to see the accounts up to June, 1890. The hearing is adjourned to enable the appellants to re-state their case (*a*).

1891. These appeals afterwards came before the Court on more
July 30, 31; than twenty days, and the decision ultimately depended
August 1, 7; mainly on questions of fact. It is therefore thought un-
Oct. 15, 16; necessary to report the cases fully, but, having regard to
Nov. 5, 6, 7, the number of questions of principle raised and considered,
9, 12, 13, 14, it has been thought that a summary of the valuations of
18. some of the witnesses, and of the arguments of counsel, may be useful.

Little, Q.C. (*Castle*, Q.C., and *Danckwerts* with him), in opening the case for the appellants, gave statistics of receipts and expenditure for a period subsequent to the year ending June 30, 1890 (which year was throughout the proceedings, for convenience, called "*the account year*").

The CHAIRMAN (Sir P. H. Edlin, Q.C.): If the calculations are based on the accounts for the year ending June 30, 1890, I do not think we can consider the later figures, except in so far as they show an ascending or descending scale.

(*a*) Cf. the cases cited in the note, *supra*, p. 60; and see especially p. 169.

The following evidence was given for the appellants:—

1891.

Mr. J. W. Field, the accountant of the company, proved the following valuation, based on the figures of the “account year” (ending June 30, 1890).

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Receipts from sale of gas (less bad debts)	- £2,273,180
Rental of meters	- - - - - 53,575
Rental of stoves	- - - - - 8,216
Sale of residuals	- - - - - 841,754
Miscellaneous receipts	- - - - - 1,574
	£3,178,299

Expenditure :

Coals (at 13/2·78 per ton)	- £1,255,316
Salaries (manufactory)	- 20,068
Wages (carbonizing)	- - 331,568
Purification	- - - 63,419
Repairs of works and plant	- 276,762
Salaries and wages (distribution)	- - - - 47,906
Repairs of mains (including cost of replacing small mains by larger ones)	- - 52,185
Meter and stove repairs (including sums written off for depreciation)	- - - 67,615
Public lamp charges	- - 31,399
Management	- - - 61,093
Parliamentary and law charges	9,690
Public officers' expenses	- 4,517
Annuities	- - - - 18,346
	2,239,884

Net receipts - £938,415

Interest on tenant's capital ($17\frac{1}{2}$ per cent. on 1,705,577 $\frac{1}{2}$) - - - - - 298,477

Carried forward - £639,938

1891.	Brought forward	-	£639,938
GAS LIGHT & COKE Co. v. CITY OF LONDON UNION.	Deduct a further sum for re- newals (difference between actual expenditure and aver- age) - - - - -	£122,796	
	Insurance at 10s. per cent. on value of buildings - -	18,787	
			<u>141,583</u>
	Rateable value of whole (plus rates) -		£498,355
	Rateable value (plus rates) of indirectly productive portion - - - -		<u>355,325</u>
			£143,030
	Rates, at 5s. 2d. in the pound - - -		<u>29,363</u>
	Rateable value of living mains - -		£113,667

These calculations took no notice of the fact that the price of common gas (on the north side of the Thames) was increased by the appellants as from June 30, 1890, from 2s. 6d. to 2s. 9d. per 1,000 feet. The actual expenditure for coal was put down in the working expenses, but in making up the tenant's capital, the stock of coal was put down at a higher price, in consequence of the increase since the end of the "account year."

The item of 18,346*l.* for annuities included 4,921*l.* paid to officers compulsorily retired under Board of Trade schemes of amalgamation.

Mr. Field made up his tenant's capital thus:—

Cash balance - - - - -	£50,000
Stock of coal (450,000 tons at 14s. 6d.) -	326,250
Stock of coke - - - - -	12,500
Stock of tar and ammoniacal liquor, &c. -	80,000
Sundry stores:—Firebricks, clay retorts, iron, steel, sundry castings, meters, stoves, timber, bricks, horses, &c. - - -	<u>157,439</u>
Carried forward	£626,189

	Brought forward	£626,189	1891:
Tools and chattels - - - - -	-	170,801	GAS LIGHT & COKE CO. v. CITY OF LONDON UNION.
Meters - - - - -	-	275,826	
Stoves (after deducting depreciation)	-	53,665	
Five-twelfths of net expenditure	-	529,096	
Rates for the half-year, say - - -	-	50,000	
		<u>£1,705,577</u>	

The last item but one was explained as the amount which a tenant would have to incur in carrying on the business before he would get in any part of his gas rates from his customers, allowance being made for moneys he would receive during the period for supplemental gas accounts, and for sales of coke and other residual products. Mr. Field, in arriving at this amount, deducted 65,000*l.* from the annual working expenses as representing the repairs properly chargeable not to the hypothetical tenant, but to the landlord.

The following is a summary of the valuation made by Mr. H. E. Jones, the engineer of the Commercial Gas Company.

Receipts - - - - -	£3,198,577
Expenditure (including bad debts and rates and taxes) - - - - -	<u>2,416,962</u>
Balance agreeing with published accounts -	£781,615
If valuation is to be restricted solely to precise figures of "account year," then deduct	
Additional expenditure for wear and tear -	<u>47,433</u>
	734,182
Tenants' share:	
17½ per cent. on 1,755,374 <i>l.</i> - - -	<u>307,190</u>
Landlord's gross share -	426,992
Renewals and insurance - - - - -	<u>99,427</u>
Landlord's net, subject to correction for rates	327,565
R.	P

1891.	Brought forward -	£327,565
GAS LIGHT & COKE Co.	Rates paid in account year -	£155,864
v. CITY OF LONDON UNION.	Rates payable on assessment of 384,182l. - - - -	99,247
	Difference - - - - -	56,617
	Rateable value of whole -	384,182
	Rateable value of indirectly productive works	282,370
	Rateable value of mains -	£101,812
	But to find proper average annual value from 1890 to 1895, proceeding from same net balance (June, 1890) - - - -	781,615
	Correct for further changes:—	
	Add for increase of 3d. per 1,000 feet in price of gas - - - - -	209,812
	Deduct:	991,427
	Additional expenditure for wear and tear - -	£47,433
	Increase in wages - -	27,857
	Increase in net cost of coal -	91,295
		166,585
	Corrected net receipts -	824,842
	Tenants' share:—	
	17½ per cent. on 1,783,968l. - - -	312,194
	Landlord's share gross -	512,648
	Renewals and insurance - - - -	99,427
	Landlord's share subject to correction for rates	413,221
	Rates paid in account year -	£155,864
	Rates payable on 452,253l. -	116,832
		39,032
	Rateable value of whole -	452,253
	Indirectly productive works - - -	282,370
	Rateable value of mains -	£169,883

Mr. H. E. Jones made up his tenants' capital thus:—

	1891.
(1.) Included in fixed expenditure account of capital,	GAS LIGHT & COKE CO. v. CITY OF LONDON UNION.
Meters - - - - £275,826	
Stoves - - - - 53,665	
Tools and chattels- - - 170,801	
	£500,292
(2.) Floating capital as per balance sheet,	
Bankers - - - - £96,378	
Stocks and stores - - - 330,091	
Book debts, gas and sundries due 625,095	
	1,051,564
	1,551,856
Add extra stock of coal necessary at advanced price - - - - -	237,372
	1,789,228
Deduct undue stocks, ammonia and tar -	33,854
	£1,755,374

The effect of taking the extra stock of coal at a price on the average of five years, was to increase it to 265,966*l.*, making a total of 1,783,968*l.*, the sum taken as the tenants' capital in the second part of Mr. Jones' calculation.

In order to distinguish between directly and indirectly productive mains, Mr. Jones adopted a principle which (he admitted) was new and peculiar to himself. He took as a figure, founded on his own experience, the sum of 19*l.* as the value of the mains necessary to supply in any one parish 1,000,000 cubic feet of gas per annum. He then calculated the structural value of *all* mains in each parish, and subtracted therefrom a sum equal to 19*l.* per million feet of gas supplied in that parish in the year, and the balance, if any, he regarded as the value of the indirectly productive mains in that parish: see further upon this point, *infra*, p. 216.

Mr. Corbet Woodall also gave evidence on behalf of the appellants.

1891.	Sir <i>E. Clarke</i> , S.-G., <i>Poland</i> , Q.C., and <i>R. Cunningham</i>
GAS LIGHT & COKE Co.	<i>Glen</i> for the City of London Union.
v. CITY OF LONDON UNION.	The following is a summary of the evidence given for the respondents:—
	Mr. William Eve's valuation :
	Receipts from gas meter and stove rentals, residuals, &c. - - - - - £3,198,577
	Expenditure (including repairs and rates and taxes) - - - - - 2,382,432
	Net receipts - - - - - £816,145
	Add extra receipts for increased price of gas - - - - - 211,384
	1,027,529
	Deduct extra net cost of coal - - - - - 91,295
	936,234
	Tenants' share (15 per cent. on a tenant's capital of 1,000,000 <i>l.</i>) - - - - - 150,000
	786,234
	Renewals and insurance - - - - - 23,500
	Landlord's share (subject to correction for rates) - - - - - £762,734
	New rates payable on 765,328 <i>l.</i> (<i>i.e.</i> , if assessments appealed against are confirmed) - - - £197,710
	Rates actually paid in "account year" - - - - - 155,864
	41,846
	Total rateable value - - - £720,888
	Deduct indirectly productive works- - - 220,000
	Rateable value of directly productive portion - - - - - 500,888
	Estimated receipt arising from further in- crease of 3 <i>d.</i> per 1,000 cubic ft. in price of gas which would have been made had not the company had funds in hand to enable them to pay maximum dividends - 211,384
	£712,272

Mr. Eve's differed from Mr. Jones' calculations (*vide supra*, p. 209) upon one or two questions of amount, and upon the following questions of principle. Mr. Eve disallowed part of the expenses of "stove fixing and repairs" as being properly chargeable to capital, the expenses having been incurred in order to develop a new business. Mr. Eve disallowed part of the expenses for management, on the ground that they included salaries paid to officers who superintended the extension of works, which was a matter chargeable to the landlord's capital account and not part of the hypothetical tenant's duties. Mr. Eve disallowed the whole of the parliamentary charges for a similar reason. Mr. Eve disallowed part of the sum charged for superannuation in respect of officers whose services were rendered unnecessary by the amalgamation of companies, and he made a further deduction on the following ground: that superannuation allowances, which are in the nature of deferred pay, should be calculated upon an average of years, and deductions should be made in the early years of a company's existence, even though no superannuation allowances were in fact paid; that consequently a new company should be allowed more and an old company (such as the appellants') less than the actual payments. Mr. Eve made up his tenants' capital thus:—

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Total working expenses	-	-	-	-	£2,382,432
Deduct rates and taxes (<i>vide infra</i>)	-	-	-	-	155,864
					<u>2,226,568</u>
Add extra net cost of coal	-	-	-	-	91,295
					<u>2,317,863</u>
Deduct repairs to works, mains and pipes, and stoves	-	-	-	-	324,199
					<u>£1,993,664</u>
Three months' expenses ($\frac{3}{8}$ of 1,993,664 <i>l.</i>)	-				747,624
Deduct receipts from residuals during three months	-	-	-	-	315,658
					<u>£431,966</u>
Carried forward	-	-	-	-	

1891.	Add:	Brought forward	-	£431,966
GAS LIGHT & COKE Co. v. CITY OF LONDON UNION.	Coals in stock, equal to four weeks' consumption	-	-	103,432
	Coke	-	-	12,500
	Tar and other products	-	-	80,000
	Stores (tenants' only)	-	-	40,000
	Loose plant	-	-	80,000
	Rates for three months	-	-	50,000
	Meters (prime cost, less 33 per cent.)	-	-	245,179
				£1,043,077

Mr. Eve struck out the claim for "cash at bankers," pointing out that the company in fact held about 28,000*l.* as deposits by customers to whom they paid 5 per cent. He also struck out the item of 53,665*l.* for stoves, on the ground that they constituted, when fixed, a part of the rateable hereditament, and were therefore comparable to a kitchen range.

Reference was made to *Midland Ry. Co. v. Islington*, Ryde's Rat. App. (1886-90) 139, in which case the assessment sessions had allowed interest on tenant's capital, at 17½ per cent., in accordance with the practice of that Court.

Sir P. H. EDLIN: That case was not tried before me: shortly after the decision I conferred with the then chairman (Sir W. Hardman), and we did not regard the 17½ per cent. as an immutable hard and fast line: I have thought that the time would come when we should have to reconsider it.

The evidence of Mr. W. A. M. Valon, President of the Incorporated Gas Institute (who had in conjunction with Mr. Eve prepared the valuation above set out), related mainly to questions of fact. He considered that the hypothetical tenant of the appellants' gasworks must always have in hand a stock of coals equal to about 5½ weeks' consumption. Mr. Valon, in making up the tenant's capital, excluded all stores required for the repairs

of the rateable hereditament, on the ground that these must be regarded as the property of the hypothetical landlord. He admitted that many repairs must be done immediately, and by the tenant in occupation, who would have to provide the stores.

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Mr. Edward Ryde made the following valuation :—

Gross receipts from sale of gas, meter and
 stove rentals (less bad debts) - - - £2,546,201

Working expenses—

Coal, purifying materials,
 &c. - - - - £1,435,926

Less residual products - 869,894

Net cost of coal and purify-
 ing materials - - 566,032

Salaries, wages, &c. (in-
 cluding repairs and re-
 newals of meters and
 stoves) - - - 553,040

Repairs of chattels and
 apparatus (other than
 those of rateable here-
 ditament) - - - 100,000

Rates and taxes at 5s. 2d.
 on 662,182l. - - - 171,064

1,390,136

Net receipts - - - £1,156,065

Occupiers' share (interest at $17\frac{1}{2}$ per cent.
 on a tenant's capital of 1,350,000l.) - 236,250

Gross value - - - 919,815

Repairs and renewals of rateable heredita-
 ments and insurance - - - 257,633

Rateable value - - - £662,182

In arriving at the gross receipts, Mr. Ryde made an addition of 3d. per 1,000 cubic feet to the actual receipts, to correspond with the increase in the price of gas as from

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June 30th, 1890, the termination of the "account year." Mr. Ryde allowed the whole of the directors' fees, but struck out the annuities paid to officers who retired on the amalgamation of several companies. Mr. Ryde also struck out part of the actual expenditure on stove fitting, repairs, and renewals. He made up the tenant's capital thus:—

Five months' working expenses - - -	£939,221
Deduct $\frac{5}{8}$ of five months' receipts from sale of residuals ($869,894 \times \frac{5}{12} \times \frac{5}{8}$) -	226,535
	712,686
Meters and stoves - - - - -	318,400
Six weeks' stock of coal and purifying materials - - - - -	165,684
Cash at bank, tools and implements, spare pipes, &c., say - - - - -	153,230
	£1,350,000

In arriving at the sum of 939,221*l.* for the working expenses, Mr. Ryde struck out the directors' and auditors' fees, but included all the other items (including rates and taxes) which he had inserted in the body of his calculation, and made no deduction from the cost of coal, in respect of the sale of residuals.

In arriving at the rateable value of the indirectly productive works (amounting to 250,000*l.*), Mr. Ryde had taken the actual assessments (not appealed against) standing in the valuation lists wherever a separate entry appeared. He also treated all mains with a diameter of 24 inches and upwards as unproductive. This part of the witness's valuation was ultimately adopted by the Court (*a*).

(*a*) The witnesses on either side adopted different distinctions between the directly and indirectly productive mains, but most of them admitted that the distinction was a merely arbitrary one. Mr. Woodall took mains of 36-in. diameter and upwards as indirectly productive; Mr. Marshall took such mains as were not tapped by house pipes; other witnesses took mains of 14-in. diameter and upwards. See also p. 211, *supra*.

Mr. W. Marshall's valuation may be summarized thus :		1891.
Receipts from gas, meter and stove rentals and residuals - - - - -	£3,198,576	GAS LIGHT & COKE Co.
Expenditure, including coals, salaries and wages, rates and taxes, &c. - - -	2,398,819	v. CITY OF LONDON UNION.
Net receipts -	799,757	
Deduct for necessary corrections: wear and tear - - - - -	3,085	
	796,672	
Add abnormal expenditure in 1889-90 before price of gas could be increased to meet it - - - - -	259,377	
Total amount appropriated by company in 1889-90 under their statutory powers -	1,056,049	
Add rates and taxes actually paid in 1889- 90 to be deducted afterwards in each parish - - - - -	155,864	
Total amount appropriated by company, plus rates and taxes - - - - -	1,211,913	
Tenants' share ($17\frac{1}{2}$ per cent. on 1,300,000l. plus 5 per cent. on consumers' deposits —28,300l.) - - - - -	228,915	
	982,998	
Renewals and insurance - - - - -	59,130	
Rateable value, plus rates -	£923,868	

Mr. Marshall excluded from the working expenses the parliamentary charges, and certain rents, which he regarded as being similar to ground rents for which no deduction can be claimed. The item of 3,085l. deducted for wear and tear represents the difference between the actual expenditure on repairs, &c., and the average expenditure. The item of 259,377l. for "abnormal expenditure" was explained in this way: had it not been for the sudden rise in the cost of coal, labour, and materials, the company

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would have earned enough to pay their dividends, interest on debentures, &c. : viz., 1,056,053*l.*, which sum was paid in part out of the reserve fund. Mr. Marshall contended that the abnormal expenditure must therefore be eliminated and debited against the fund for "risks and casualties" created by the allowance of $2\frac{1}{2}$ per cent. on the tenants' working capital, even if there were no reserve and insurance funds to debit it against. Mr. Marshall submitted that the tenant could not claim the allowance of $2\frac{1}{2}$ per cent. for risks and casualties in every year, plus the actual expenditure in the year in which the casualty occurred. And in answer to a suggestion that a hypothetical tenant for a year would not take over the reserve fund, he said that the same thing was true of a sinking fund for renewals.

Mr. Marshall made up his tenants' capital thus :—

Total working expenses-	-	-	-	£2,389,009
Deduct :				
Cost of coal	-	-	£ 1,255,316	
Landlord's renewals				
(estimated at $\frac{1}{3}$ of				
total cost of repairs				
and renewals)	-		110,677	
				1,365,993
Tenants' working expenses, excluding coal				1,023,016
$\frac{8}{9}$ of 1,023,016 <i>l.</i>	-	-	-	383,631
Add for coals, 1,000,000 tons at 13 <i>s.</i> 3 <i>d.</i>	-			662,500
Labour on residual products	-	-	-	13,500
				1,059,631
Deduct: cash from residuals				
October 1 to January 15		£286,355		
Consumers' deposits	-		28,300	
Payments for gas between				
October 1 and January 15		100,000		
				414,655
Carried forward	-	-	-	£644,976

Brought forward	-	-	£644,976	1891.
Stores in hand	-	-	193,764	GAS LIGHT & COKE Co. v. CITY OF LONDON UNION.
Tools, meters and stoves	-	-	403,392	
Fixed balance for contingencies	-	-	50,000	
			£1,292,132	

Total working capital required by tenant entering at Michaelmas, 1889, say 1,300,000%.

Mr. W. R. Chester, Mr. R. W. Hedley, Mr. W. G. Cook and Mr. W. S. Cross also gave evidence for several respondents.

Poland, Q.C., for the Marylebone Assessment Committee and other respondents: The determination of the rate of interest on tenant's capital is a question of fact: *per Blackburn, J., R. v. Sheffield Gas Co.* [1863], 32 L. J. M. C. 169. It is admitted that for some years $17\frac{1}{2}$ per cent. has been taken in general practice. In older cases even higher rates were taken: in *R. v. Southampton Dock Co.* [1851], 14 Q. B. 587, 25 per cent.; in *R. v. Grand Junction Ry. Co.* [1844], 4 Q. B. 18, 20 per cent.; and in *R. v. Sheffield Gas Co., ubi supra*, 20 per cent. was allowed. In *Midland Ry. Co. v. St. Pancras*, Ryde's Rat. App. (1886-90) 121, before the assessment sessions, $12\frac{1}{2}$ per cent. was taken in rating the St. Pancras Station Hotel. The rate of interest must vary according to the subject matter to be rated. As to the composition of the tenant's capital, the appellants have wrongly included all the landlord's tools, stores, and appliances. It was suggested that if a main is broken by a steam roller the tenant must repair it without waiting for the landlord. That is admitted, but he does it as the agent of the landlord, and at his expense, and the landlord pays for it out of the rent. New retorts, ready to be fixed, were wrongly included in tenants' stores. The retort, when fixed, becomes part of the rateable hereditament: see *R. v. Lee* [1866], L. R.

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1 Q. B. 241; and before it is fixed may be compared to a stack of bricks ready to be built into a wall, or to the store of sand to form part of the filter beds of waterworks, held by the assessment sessions to form part of the rateable hereditament: see *East London Waterworks Co. v. St. Leonard's, Shoreditch*, Ryde's Rat. App. (1886-90) 155. These cases are confirmed by the *Tyne Boiler Works Case*, *ibid.* 241.

As to the working expenses, parliamentary charges for obtaining further powers and laying fresh mains cannot be a yearly tenant's expenses; nor would such a tenant seek protection from steam rollers for his pipes, he would demand a reduction of rent unless the landlord sought protection from parliament. No evidence has been given to show that *any* parliamentary charges are tenant's expenses. As to superannuation allowances, those which are of the nature of deferred pay are not disputed, but where, as in the present case, several companies are amalgamated, or bought up, and officers of the old companies have to be compensated, allowances so made may be regarded as part of the purchase money, which might well have been paid in a lump sum and with which the present annual tenant is not concerned (*a*).

Fullarton, Q.C., for St. Saviour's Union: Superannuation allowances can only be regarded as part of working expenses, in so far as they can affect wages, and payments made to persons who, *ex hypothesi*, never were officers of the present appellants, cannot be deducted. The principle of Mr. William Marshall's valuation (*supra*, p. 217) is correct; we are now dealing with a statutory tenant, with all the burdens and privileges of protection; he is something more than the mere hypothetical tenant. The tenant for a year who earns in that year more than he can legally appropriate in dividends, if he goes out, cannot take the sum

(*a*) See a decision upon this point in *London and India Docks v. Stepney Union*, *supra*, p. 153.

represented by undivided profits, or reserve fund; it does not belong to him, because he has never earned it by selling gas at that price under the statutory sliding scale, which will enable him to take it. Profits do not become the property of the tenant until they are legally divisible. Even if this contention be unsound, the fund created by the $2\frac{1}{2}$ per cent. allowed for risks and casualties must cover the loss in this year. The suggestion that a tenant for one year would not be entitled to the accumulations of that allowance in past years is a fallacy; the allowance must be treated as analogous to a premium for fire insurance. As to the percentage on tenant's capital, $17\frac{1}{2}$ per cent. has been treated as the maximum for the most risky business; the appellants are subject to no extraordinary risks; breaches of contract by persons employed by them are punishable under the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 4; and all trades are subject to strikes.

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F. Marshall, for St. Luke's, Chelsea: As to the tenant's capital, Mr. Jones adopts a principle peculiar to himself (*vide supra*, p. 211); he takes (*inter alia*) from the company's accounts 625,000*l.* as book-debts owing to the company at Christmas, 1889; but he ignores the fact that that sum includes the tenant's profits, which clearly do not form part of the capital which the tenant would have to find.

Sir *E. Clarke*, S.-G., for the City of London Union and other respondents: The Court has to determine not so much what is the proper percentage on tenant's capital, and what is the amount of that capital, as what is the proper allowance for a tenant who would provide the capital necessary to carry on the appellants' works. It may be that if the capital be cut down to the lowest possible amount, 15 per cent., added to $2\frac{1}{2}$ per cent. for risks, would not be too much; but if the capital be not so

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limited, that percentage, when applied to a larger capital, would be a ridiculous allowance. It is admitted that 17½ per cent. has been the traditional allowance, but there has never been laid down any rule that the Court are bound to deal with all cases alike. As to the working expenses: something must be deducted from salaries paid to officers, who work for both the landlord and the tenant. It may be difficult to say how much less would be paid to them, if they worked for the hypothetical tenant alone, but some apportionment must be made. The distinction between the hypothetical tenant and the landlord affects the question of the repairs and the stores. It is impossible to draw a hard and fast line of distinction; it is merely a question of book-keeping. It has been suggested that the Court must assume a contract by the tenant to do the repairs, and to find the necessary materials; and that the tenant must have the necessary capital. No such assumption can be made, because the landlord is, in the present case, on the spot ready to do the repairs, and has the necessary stores in hand.

Little, Q.C., for the appellants, in reply: The expenditure on stoves ought to be allowed in full, even though it be greater than the receipts therefrom: in *R. v. Southampton Dock Co.* [1851], 14 Q. B. 587, a deduction was allowed for the expenses of a steam tug, which was in itself a source of loss. In the same case, too, directors' fees were allowed in full, and they should be allowed in this case. The owner of the hereditament would not want directors; he might be an individual. The superannuation allowances (to officers who have retired on the amalgamation of the various companies) are part of the means which enable the present tenant to earn the profits on which he is rated. As to the claim to rate the appellants in respect of sums drawn from the reserve fund: this fund has already been rated in each year as it was earned; further, a hypothetical tenant on coming in would not have it either in fact or in

law. If the London County Council were authorized to take over the appellants' works, they would not take the reserve fund. It cannot be right to give the accumulations of many years to the tenant of one year. The fund belongs to the company, who (as the respondents have insisted) are both landlord and tenant. Again, the $2\frac{1}{2}$ per cent. for risks and casualties is not like a sinking fund; it is a reward given in each year for taking the risks of that year; and it is as much exhausted in each year as a premium paid for fire insurance. As to the method of dealing with repairs to the rateable hereditament: even if they are supposed to be done by the landlord, it is not necessary to assume that he would be in the trade. He would employ a contractor, who would want a profit: hence it is not unreasonable that the tenant should deduct, not merely the cost price of repairs, but $17\frac{1}{2}$ per cent. interest on his outlay on the necessary stores and tools in hand for those repairs. It is submitted that no increase in the price of gas, which might be, but which has not in fact been made by the appellants, can be taken into account. When that increase is made, a supplemental list can be brought in (a).

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 GAS LIGHT &
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Cur. adv. vult.

Motion on behalf of the assessment committee of St. Mary Abbotts (one of the respondents), for leave to put in evidence on behalf of the respondents, one of the printed notices issued by the appellants, bearing date December, 1891.

1891.
 Dec. 23.

The following is a copy of the notice:—

“The directors hereby give notice that from the date of recording meter indices for the current quarter, the price of common gas will be 3s. 1d. per 1,000 cubic feet.”

“December, 1891.”

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B. Houghton in support of the motion: The respondents desire that the Court should not act merely on an estimate of probable increase in the price of gas, and that the necessity of a supplemental list may be avoided (*a*).

Littler, Q.C., for the appellants: This is an application to give evidence of a fact happening since judgment was reserved.

The motion was dismissed with costs.

1892.

Feb. 8, 19, 26;
March 12,
14, 23;
Nov. 1, 30.

In the judgment of the Court, no decision was given upon the questions of principle referred to in the arguments; it is therefore thought unnecessary to report it. The effect of the judgment was to find that the appellants were under-assessed in some parishes, and over-assessed in others; and this became material upon the question of costs, especially as to the City of London Union, as to which the following judgment was delivered by

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The position of the City of London Union with regard to the claims for costs is peculiar, and has led to much discussion. There are 114 parishes in this union, and as to the valuations in five of them the appellants raised no objection. The other parishes were represented by the same solicitor and the same counsel, and with the consent of the appellants all the assessments in these parishes were dealt with as forming the subject of one appeal, and it was agreed that the subdivision of the total amount assignable to the union should be adjusted afterwards. The sum total of the rateable values assigned to this union is 56,696*l.*; but the assessments by the respondent committee amounted only to 51,817*l.*, and the appellants required that that sum

should be reduced by 34,251*l.*, that is to say, that the proper rateable value should be fixed at 17,566*l.* Now it was seemingly upon the understanding aforesaid that in their tabular statement of the particulars required by the Court for considering the question of costs, the appellants presented only the sums total above mentioned, thus not dealing with the parishes separately, but in union. But it appearing from the parochial apportionment that they are entitled to a certain reduction in as many as sixty-eight of the parishes, although upon the whole they are shown to have been largely under-assessed in this union, the appellants afterwards produced a sub-divisional table as the basis of a claim by them to as many distinct orders for costs against those sixty-eight parishes. It will be observed that, for the reason stated, the appellants avoid the payment of rates on the several amounts in which they are under-assessed in the forty-one other parishes, and inasmuch as those under-assessments exceed by nearly 5,000*l.* the reductions allowed in the other parishes, which amount only to 10,617*l.*, the appellants, while benefiting from those reductions, are exempt from rateability in respect of upwards of 15,000*l.* assigned rateable value in this union. Upon the actual result we make an order that the appellants pay so much of the general costs of the assessment committee as represents the proportion between the rateable value in the parishes in which no reduction will be made and the total rateable value assigned to the union; and, save as afterwards appears, we make no order with regard to the general costs relating to the other parishes in this union.

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[The effect of the judgment as to other respondents was as follows:—The respondents who were entirely successful were to have the whole of their costs: in the case of some respondents no order as to costs was made: as against the unsuccessful respondents, it was ordered that the appellants should recover *the whole* of their general

1892. GAS LIGHT & COKE CO. v. CITY OF LONDON UNION.	bill of costs (excluding the special charges attributable to parishes in which the appellants failed), notwithstanding the fact that this general bill of costs was, in part, incurred in respect of appeals in which the appellants failed. It was further ordered that the appellants' general bill of costs should be divided among the several parishes ordered to pay, in proportion to the reduction in rateable value granted by the Court.]
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1892.
 July 21.

SOUTH EASTERN RAILWAY COMPANY *v.* ST. SAVIOUR'S
 UNION.

Practice—Costs—Valuer appointed by Sessions.

Where costs are incurred in one appeal for preparing a valuation which is useful in other appeals, such costs should be apportioned.

Where, by the report of a valuer appointed under s. 36 of the Valuation (Metropolis) Act, 1869, a considerable reduction in the assessment appealed against was made, but the rateable value was found to be about half-way between the contentions of the appellants and respondents, the quarter sessions gave the appellants their costs up to the appointment of the valuer, and gave them the costs of the motion for judgment in accordance with his report, but gave no costs of the proceedings before the valuer.

Two appeals had been entered in respect of the portions of the appellants' line, lying respectively in the parishes of Christ Church and St. Saviour, both in the St. Saviour's Union; in these and in other appeals relating to other parts of the line lying in different parishes, Mr. Staveley Hill, Q.C., had been appointed as valuer by the sessions under s. 36 of the Valuation (Metropolis) Act, 1869. He had made his report, and application was now made for judgment in accordance therewith, and for costs, in both appeals in the St. Saviour's Union.

Littler, Q.C. (*E. Boyle* with him), for the appellants: In the parish of Christ Church, the assessment, before the making of the quinquennial list in 1890, stood at 2,890*l.* rateable value; the assessment committee raised it to 3,528*l.*; the appellants claimed a reduction to 2,721*l.*, and the valuer has reduced it to 2,814*l.*, *i.e.*, he has granted a reduction instead of an increase of the former assessment. The appellants ask for costs.

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v.
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Balfour Browne, Q.C.: The rateable value of a line of railway depends mainly on the gross receipts. The respondents knew that the receipts over the whole of the appellants' system had increased, and assumed that there had been a corresponding increase in the particular parish; this assumption is now shown to be wrong. The appellants refused to furnish the respondents with receipts in this parish until the appearance before the valuer.

The CHAIRMAN (Sir P. H. Edlin, Q.C.), after consulting with the learned valuer, said: The appellants having obtained so substantial a reduction are entitled to costs generally, subject to this qualification: in this case it would be necessary to prepare a valuation relating to the entire hereditament, which could be utilized in similar appeals in other parishes. As to that portion of the bill of costs which relates to such information, the costs are to be divided between the several parishes, and the respondents in this appeal are to pay only their proportion. That is to say, supposing there are two parishes, in one of which the rateable value is 100*l.* only, while in the other it is 400*l.*, the costs are to be divided in the proportion of one-fifth and four-fifths. The valuer's charges are to be borne by the parties in equal moieties (*a*).

Application was next made for judgment, and for costs, in the appeal relating to St. Saviour's parish.

(*a*) Cf. *Gas Light & Coke Co. v. Westminster Union*, *infra*, p. 256.

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Littler, Q.C., for the appellants: In the list of 1885, the assessment stood at 11,500*l.* rateable value; in 1890 the overseers made no alteration, but the assessment committee raised the assessment to 16,107*l.* The appellants in their case claimed a reduction to 12,000*l.*, and gave evidence in support of a reduction to 12,658*l.* The valuer has made a reduction to 14,209*l.* [Sir P. H. EDLIN: Then the appellants' contention was nearer the result than the respondents' by 347*l.*] But for the appeal the appellants would have had to pay rates for five years on an assessment which was too high by 1,898*l.* This is a sufficient reduction to entitle them to costs.

Balfour Browne, Q.C., for the respondents: Had the figures stated in the appellants' case been adopted, they would have escaped rating to the extent of 2,209*l.* The main question contested before the valuer was as to the method of calculating the receipts on the lines in the parish, which included the triangle formed by the line running direct from London Bridge to Charing Cross, and the lines running into, and out of, Cannon Street Station. The respondents contended that 88 per cent. of the traffic to Charing Cross went by the longer route, and 12 per cent. by the shorter. The appellants contended that half went each way. The valuer found that 75 per cent. went *via* Cannon Street. This finding shows that the respondents were more nearly right in principle.

Littler, Q.C., in reply: The increase from 11,500*l.* to 16,107*l.* made an appeal inevitable.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We think that the appellants should have their costs up to the appointment of the valuer; each party must bear their own costs of the proceedings before him. The appellants are entitled to the costs of this application.

LONDON & NORTH WESTERN RY. CO. *v.* CITY OF LONDON
UNION.

1892.
July 21, 22.

Warehouse—Goods Dépôt—Principle of Rating—Practice—Costs.

Premises connected with a goods dépôt, comprising warehouses, in part of which sidings are laid communicating with a railway, are to be rated not merely as warehouses, but as an adjunct of the railway; and the proper basis of valuation is the annual value of the land and a percentage on the structural value of the buildings.

Where the sessions decided against the appellants on the main question of principle raised by the appeal, but made a small reduction in the assessment appealed against, the appellants were ordered to pay the respondents' costs.

APPEAL against an assessment of 4,000*l.* gross and 3,334*l.* rateable value, in respect of property situated in the parish of St. Botolph, Aldgate, and described in the valuation list as "warehouse and goods station."

Staveley Hill, Q.C. (*E. Page* with him), for the appellants: The premises are occupied as warehouses, and must be valued as such, having regard to the rental value of similar warehouses, which are let at rents calculated on the square (of 100 sq. feet) of floor space.

The premises were described in evidence thus: they occupied an area of between 30,000 and 31,000 sq. feet, having a frontage of 25 feet to Aldgate, from which street there was a carriage-way leading into a paved yard, giving access to the appellants' warehouses, both yard and warehouses forming part of the premises to be rated. The boundary of the parish of St. Botolph, Aldgate, ran through the appellants' property; and some or all of the parts outside the parish were admittedly used as a goods dépôt, known as the Haydon Square Dépôt, and forming the terminus of a branch line of railway which was occupied by the appellants, and gave access to the whole of the appellants' system. On the first floor of part of the warehouses within the parish there were sidings communicating

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with the branch. No locomotive engines ever ran on these sidings, but loaded trucks were drawn along them with ropes by means of hydraulic power. Some parts of the warehouses within the parish were let to tenants, but the appellants did all repairs and paid rates and taxes; it was not disputed that the appellants were rightly rated as occupiers.

The appellants called as witnesses to give evidence of value Mr. T. Dinwiddy, Mr. C. Dunch, and Mr. W. Ryan, whose valuations (amounting to about 2,012*l.* gross and 1,677*l.* rateable value) were based on the letting value of the floor-space of the several warehouses; the prices per square of 100 feet being considerably above the rents actually paid by the tenants of the several parts let. Mr. Dinwiddy also made an alternative valuation, based on structural value of buildings and ground rent; he valued the entire area of land at threepence per foot per annum, making a total ground rent of 377*l.*, to which he added 4 per cent. on the estimated structural value of the buildings (35,000*l.*), thus arriving at a rateable value for land and buildings of 1,777*l.*

The CHAIRMAN (Sir P. H. Edlin, Q.C.) on the first day of the hearing said: "The question seems to be whether this warehouse is an ordinary warehouse, or whether, by means of the rails and sidings, it is made an adjunct of the railway."

No direct evidence was given to show whether all, or what part, of the goods stored in the warehouse were carried over the appellants' railway, nor to show the terms on which the several parts let to tenants were held.

Poland, Q.C. (*Balfour Browne*, Q.C., and *R. Cunningham Glen* with him), for the respondents: The question is whether the proper method of valuation of such premises as are now before the Court, is (1) by an estimate of the

letting value of the floor space; or (2) by calculating a percentage on the structural value of the buildings and adding thereto a ground rent. By the former method, the valuation rests solely on the statement of the witnesses, and cannot be checked. The latter method must be applied to these premises, which are in fact part of a railway station. In the appellants' published time-table, there appears under the heading "London Goods Stations" the following entry: "Haydon Square, Minorities.—For general traffic, with extensive warehouses for Irish and American provisions: bonded warehouses for tobacco and cigars, and bonded cellars for whiskey, wines, and spirits." The warehouses are evidently part of the goods station, and must be valued by reference to structural value of buildings and ground rent of land. In *L. & N. W. Ry. v. St. Leonard's, Shoreditch* [1879], Met. Rat. App. 229, which related to a warehouse at Broad Street Station, both sides adopted this method of valuation. In a previous case, *Great Northern Ry. v. Holborn Union* [1877], *Ib.* at p. 210, relating to a goods warehouse at Farringdon Road, connected by sidings with the Metropolitan Railway, the assessment sessions rejected the valuations based on the rental value of the floor space. In *L. & N. W. Ry. v. St. Leonard's, Shoreditch* [1882], *Ib.* at p. 333, which related to a "Goods yard with rails, sidings, turn-tables, and appliances," the Court upheld a valuation based on "the value of the lands, and the cost of construction." Again, in *L. & N. W. Ry. v. Hackney Union*, Ryde's Rat. App. (1886-90) 136, the assessment sessions decided that a goods depôt, though not directly communicating with a railway, and partly let to tenants, is to be rated on the same principle as an ordinary railway station.

The respondents called Mr. W. Barnett, Mr. C. A. Lang, and Mr. W. H. B. Castle, who estimated the value of the land at 1s. 6d. per square foot, and added thereto 5 per cent. on the structural value of the buildings (estimated at 37,402l. and upwards) to arrive at the rateable value.

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The witnesses did not agree in the area of land taken, and the lowest valuation amounted to 4,573*l.* gross, and 3,811*l.* rateable value.

It appeared that some of the respondents' witnesses were not aware that in the parish of St. Botolph, Aldgate, there was a "tithe," payable by the occupiers, amounting at the date of the appeal to about 2*s.* in the £ on the value of land and buildings (a).

Poland, Q.C., for the respondents: It has been the universal practice to take 4 per cent. and 5 per cent. on the value of land and buildings respectively, as representing the rateable value. The only exception was *London County Council v. Woolwich Union*, *supra*, p. 126, where, in consequence of the power of the County Council to borrow at a lower rate, this Court took 3 per cent. and 4 per cent. on the values of land and buildings respectively.

Staveley Hill, Q.C., in reply: So much of the premises as are used for the storage (as distinguished from the loading and unloading) of goods, must be treated as a warehouse. [Sir P. H. EDLIN: There are facilities here for the transmission of goods by railway; there is no evidence to show whether those facilities are utilized or not. It is for the appellants to prove that they are not.] The existence of the sidings is not sufficient reason for treating these premises as different from ordinary warehouses, for, in Lancashire and Yorkshire, nearly all warehouses, factories, and other works have siding accommodation, but are nevertheless valued at their ordinary rental value.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): The values, as they appear in the list, must be reduced from 4,000*l.* gross and 3,334*l.* rateable, to 3,680*l.* gross and 3,067*l.* rateable. The point now raised has been before the Court

(a) The history of this "tithe" will be found in the report of *Esdaile v. City of London Union*, Ryde's Rat. App. (1886-90) 105.

in other cases, and we have more than once expressed our opinion that hereditaments such as these are not to be valued merely as warehouses, when they are immediately adjoining a railway, with all the facilities given by a railway. We adhere to the opinion as to the principle of rating stated in the cases which have been cited. As that was the main question at issue in this appeal, we order the appellants to pay the respondents' costs, notwithstanding the reduction made in the assessment (b).

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Appeal allowed.

THE VESTRY OF ST. PANCRAS v. THE ASSESSMENT
 COMMITTEE OF ST. PANCRAS.

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 Nov. 1, 2.

Totals—Alteration of, in Consequence of Alterations of Individual Assessments—Additional Notice of Appeal—Times for Proceedings—Valuation (Metropolis) Act, 1869, ss. 34, 42.

The assessment committee of St. Pancras duly revised the quinquennial list for that parish in October, 1890, and entered therein the totals. In December, 1890, the Midland Railway Company appealed against, and obtained a reduction of, their individual assessment at special sessions, under s. 20 of the Valuation (Metropolis) Act, 1869. On January 14, 1891, the vestry gave notice of appeal to quarter sessions against totals, and in February, 1891, obtained an order on their appeal for the alteration of the totals, to correspond with the alteration made on the appeal to special sessions.

Subsequently to the alteration of the totals, further reductions of individual assessments were made on appeals to quarter sessions, and in July, 1891, other appeals to quarter sessions against individual assessments were still pending.

On July 17, 1891, notwithstanding the expiry of the time fixed by s. 42 (12) of the Valuation (Metropolis) Act, 1869, the quarter sessions gave the vestry leave to serve an additional notice of appeal, in enlargement of the notice of January 14, 1891.

(b) With this order as to costs, compare *L. & N. W. Ry. v. Hackney Union*, Ryde's Rat. App. (1886-90), p. 136.

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The last of the appeals to quarter sessions against individual assessments in the quinquennial list made in 1890 was not determined until Nov. 1st, 1892. Large reductions of the individual assessments appealed against were made on these appeals.

Held, on the appeal against totals, that the totals must be altered so as to correspond with the alterations made in the individual assessments on appeals to special sessions and quarter sessions.

Ex parte Woolwich Union, supra, p. 95, and *R. v. Woolwich Union, infra*, p. 279, distinguished.

Held, also, that on such an appeal against totals it was not necessary to give the London County Council notice.

Semble, neither the clerk of the assessment committee nor the clerk of the London County Council have power to make any alteration in totals to correspond with the alterations of individual assessments on appeals to quarter sessions.

Quære, what is the effect of an alteration of the totals in the quinquennial list, on the supplemental lists (made before such alteration) which have incorporated the totals as originally determined by the quinquennial list?

APPEAL against totals.

The following are the facts appearing in the joint case stated by the appellants and respondents:—

In the quinquennial valuation list for the parish of St. Pancras, made in 1890 by the vestry (acting as overseers under 59 Geo. 3, c. xxxix.), and revised by the assessment committee, the totals were entered as 1,931,815*l.* gross and 1,615,915*l.* rateable value respectively. In the addition, by an arithmetical error, the total rateable value was made too low by 9*l.*

The Midland Railway Company appealed to special sessions, and, by consent, the special sessions, on December 3, 1890, altered the company's assessment, increasing the gross value by 7,049*l.*, and reducing the rateable value by 6,222*l.*

On January 14, 1891, the vestry gave notice of appeal against totals, asking for an alteration corresponding with the alteration of the Midland Railway Company's assessment, and correcting the arithmetical error in the

total rateable value (*a*), and on February 3, 1891, an order was made by consent, on this appeal, for the alteration of the totals in the manner asked for.

In February, 1891, orders were made in appeals against the assessments of two other railway companies, involving in each case considerable reductions in both gross and rateable values. The totals (not having been altered in consequence of the alterations made on these two last-mentioned appeals) no longer represented the total of the several assessments in the list.

In July, 1891, other appeals against individual assessments in the quinquennial list were still pending (*b*), and it was foreseen that if on the hearing of such appeals those assessments were reduced, the totals would become still further inaccurate; and on July 17, 1891, the overseers obtained from the court of quarter sessions leave to serve an additional notice of appeal against totals, in enlargement of the notice of January 14, 1891, under s. 34 of the Valuation (Metropolis) Act, 1869, claiming an alteration of the totals to correspond with the alterations of individual assessments already made, or which might thereafter be made, in the pending appeals. The additional notice of appeal was served on March 17, 1892.

The last of the appeals against individual assessments in the quinquennial valuation list made in 1890 was not determined until November 1, 1892, and considerable reductions of the individual assessments were made in these appeals.

The vestry, with the consent of the assessment committee, asked for an alteration of the totals in the quinquennial valuation list, so as to make such totals correct and equiva-

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(*a*) By another mistake, the alterations asked for in the notice of appeal and ordered to be made were themselves inaccurate. It is not, however, necessary to take any further notice of the inaccuracy, on which nothing turned.

(*b*) Owing to the large number of appeals entered in 1891, the time prescribed by s. 42 (13) of the Valuation (Metropolis) Act, 1869, for the hearing was insufficient; *vide infra*, p. 360.

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lent to the aggregate amounts of the gross and rateable values of the several hereditaments entered in the said list.

The alterations in the totals necessary to correspond with the alterations made by the quarter sessions in the individual assessments appealed against (together with the alteration made in the Midland Railway Company's assessment at special sessions, and the correction of the arithmetical error in the total rateable values above referred to), were to reduce the total gross value by the sum of 18,867*l.*, and to reduce the total rateable value by 25,662*l.*

It was contended that unless these alterations were made the parish of St. Pancras would be liable to contribute a sum in excess of the fair and just proportion which ought to be charged upon the parish in respect of all rates, assessments and contributions calculated upon the total rateable value of the parish (*c*) during the whole of the quinquennial period commencing April 6, 1891, and it was estimated that such excess would amount, in each of the five years of such period, to about 3,000*l.*

Poland, Q.C., for the appellants: Both parties to the appeal assent to the alteration asked for, which is manifestly necessary in order that justice may be done. No notice of this appeal has been given to the London County Council; they are not one of the persons or bodies of persons mentioned in s. 33 of the Valuation (Metropolis) Act, 1869, to whom notice of appeal is to be given. No doubt the County Council are interested in the amount of the total, but they are not more interested in it than other public bodies whose contributions are charged thereon. [Sir P. H. EDLIN: I can see nothing in *R. v. Woolwich Union*, *infra*, p. 279, which is against your present position.] The practice before 1888, where alterations of individual assessments were made by assessment sessions, was for the clerk of the assessment committee to make the correspond-

(*c*) It was stated in argument that no rates or charges of any kind were calculated upon the total gross value, so that any inaccuracy therein would have no practical result.

ing alterations in the totals entered in the list. It is not contended that he had any legal right to do so in the face of the Valuation (Metropolis) Act, 1869, s. 34 (a). The clerk of the London County Council, who is now substituted for the clerk of the managers of the metropolitan asylums district, refuses to recognize the practice adopted before the passing of the Local Government Act, 1888.

The CHAIRMAN (Sir P. H. Edlin) : I have no doubt that we ought to acquiesce in the alterations which have been agreed upon by the parties. The only question is whether any special entry in the valuation list is necessary.

Walter C. Ryde for the respondents : A simple alteration of the totals in the quinquennial list will be sufficient. But it appears that the original totals entered in the quinquennial list of 1890 are brought forward in the supplemental lists of 1891 and 1892; and contributions in 1892 have already been calculated on the first of those supplemental lists. It seems doubtful whether the alteration of the quinquennial list only will operate upon the supplemental lists: see ss. 44 and 46 of the Valuation (Metropolis) Act, 1869.

Sir P. H. EDLIN: We will give leave to amend the joint case, and will adjourn the hearing for the parties to consider whether they will add a paragraph claiming an alteration of the supplemental lists.

The hearing was accordingly adjourned.

Poland, Q.C., for the appellants: The parties have agreed not to ask the Court to make any alteration in the supplemental lists, and to ask merely for an alteration of the quinquennial list.

(a) In the affidavit filed on the application for leave to serve the additional notice of appeal against totals, it was stated that the practice before 1888 was for the clerk of the managers of the metropolitan asylums district, on receipt of notice of the alterations made by the clerk of the assessment committee, to make corresponding alterations in the printed totals, and all contributions, &c., seem to have been calculated on the totals as so altered.

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Walter C. Ryde, for the respondents, assented.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): This appeal comes before us by consent. It may be said hereafter, if our order is questioned in the High Court, that one side only was here. The High Court will not, of course, take the same notice of a consent order as they would of an order which had been disputed.

The alterations in the totals, asked for in the joint case, were afterwards made and initialled by the chairman (a).

Appeal allowed.

1892.

November 2.

EX PARTE VESTRY OF ST. MARY, ISLINGTON.

Totals—Alteration of, in consequence of Alterations of Individual Assessments—Valuation (Metropolis) Act, 1869, ss. 20, 32, 34, 41.

The assessment committee duly revised a quinquennial valuation list for the parish of St. Mary, Islington, and inserted therein the totals. Appeals against individual assessments were afterwards heard at quarter sessions, and reductions made amounting in the aggregate to 26,858*l.* gross and 27,727*l.* rateable value. The vestry, without entering an appeal against totals, moved the quarter sessions for an alteration of the totals, so as to make them correspond with the sum of the several assessments.

Held, that the sessions had no power to alter the totals except upon an appeal against totals.

R. v. Woolwich Union, *infra*, p. 279, and *Ex parte Guardians of Woolwich*, *supra*, p. 95, followed.

MOTION that the totals entered in the quinquennial valuation list might be altered so as to make them corre-

(a) See the next case, and compare *Ex parte Wandsworth & Clapham Union*, *supra*, p. 93; *Ex parte Woolwich Union*, *supra*, p. 95; *R. v. Woolwich Union*, *infra*, p. 279.

The form of appeal adopted in the case above reported was followed in several subsequent appeals against the totals entered in the quinquennial valuation list made in the same year for other parishes; save that in the subsequent appeals notice was given to the London County Council, who appeared, but did not oppose the making of the alteration asked for,

spond with the sum of the values of the several hereditaments entered in the list, and that the chairman of quarter sessions might place his initials against such alteration.

In the quinquennial valuation list for St. Mary, Islington, as fixed by the assessment committee in 1890, the total gross value was 2,025,631*l.*, and the total rateable value was 1,686,385*l.* Appeals to quarter sessions against individual assessments were entered in 1891, and various reductions were made on such appeals, amounting in the aggregate to 26,858*l.* gross and 27,727*l.* rateable. Owing to the large number of appeals entered in 1891, the last of such appeals relating to the parish of St. Mary, Islington, was not determined until March 23, 1892, when an appeal by the Gas Light and Coke Company (*supra*, p. 204) was allowed, and a reduction of 25,617*l.* was made in the assessment of that company in this valuation list.

The assessment committee had given to the clerk of the London County Council notice, under sect. 41 of the Valuation (Metropolis) Act, 1869, of the alterations made by the quarter sessions on the appeals above mentioned, but the clerk of the County Council had refused to make any alteration in the total, on the ground that alterations of individual assessments on appeals against such assessments did not affect the totals originally determined by the assessment committee; the County Council further contended that they were entitled to issue their precept for county rate upon the total as originally fixed without alteration.

The vestry of St. Mary, Islington, thereupon gave to the London County Council notice of this motion.

R. Cunningham Glen in support of the motion: The loss to the parish, if the desired alterations are not made in the totals, will, by the end of the quinquennial period, amount to about 20,000*l.* [Sir P. H. EDLIN: The question is whether we have jurisdiction to make these alterations. Did we not say in the *Woolwich Union Case* (*supra*, p. 95)

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that we had not, and did not the Queen's Bench Division (*infra*, p. 279) uphold that decision ?] There are dicta in that case which are against this application, but they were not necessary for the decision of that case, and are not binding on this Court. The Queen's Bench Division decided merely that the precept must be based on the totals until they were altered; and the judges overlooked the fact that it was unnecessary for them to decide what powers of alteration the quarter sessions had. The provision in s. 20 that an alteration of an individual hereditament by justices in *special* sessions "shall not, of itself, in any way alter the totals," implies that an alteration at *quarter* sessions would, of itself, alter the totals. By s. 41, notice of every alteration in the total "*in consequence of any decision on any appeal to the [quarter] sessions, is to be sent, &c. ;*" this includes an alteration in the total in consequence of the alteration of an individual assessment. The words are not "alteration in the total made *by* the decision on any appeal." The alteration under this section is distinct from the alteration made by the chairman under s. 34. The judgments in the *Woolwich Union Case* (*infra*, p. 279) seem to show that the Queen's Bench Division did not rightly apprehend the facts. Wills, J. (at p. 284), says that there are appeals by individuals against individual assessments, and by parishes or unions against totals; whereas s. 32 of the Valuation (Metropolis) Act, 1869, expressly provides that "*any ratepayer in the metropolis*" may appeal against totals. Again, in that case, the judges seem to have thought that the balance of convenience was against the existence of the power to alter totals; in the present case the balance of convenience is the other way.

H. E. Ivory for the London County Council was not called upon to argue.

The CHAIRMAN (Sir P. H. Edlin): We are not insensible of the hardship and injustice, involving direct pecuniary

loss to the ratepayers of a parish, which may be caused by the decision of the Queen's Bench Division in the *Woolwich Union Case*, with reference to the power of this Court to alter the total in a valuation list. We concur in all that has been said by Mr. Glen as to the desirability of this Court having the power to direct the alteration necessary to make the figures of the inscribed total consistent with the actual sum of the several assessments constituting the total, and which, it may be said, can only properly constitute the total when regard is had to the alterations made by this Court in the valuation list upon appeals against specific assessments. But in the very case referred to, this Court had held that it had no power to make such correction except upon appeal against the impugned total brought before it by one or other of the bodies or persons to whom the right to bring such appeal is given by the statute; and the Queen's Bench upheld our decision. Whatever reason we might have for thinking that the questions raised in the *Woolwich Union Case* are deserving of reconsideration, and that a higher Court of Appeal might put a different construction on the Act, it is too much to ask us to disagree with that decision which is directly in point, in respect of the present application, and of course binding upon us. Moreover, with regard to the alleged injustice and hardship, much may be said on the other side. The resolve on the part of a public body like the County Council to exercise their right of appeal may be governed by the actual totals appearing in the valuation list as finally settled and deposited by the assessment committee; and it may be said that a subsequent alteration of the total by reason of *ex post facto* judgments in appeals to which they were not parties, might injuriously affect that right when they have *not* themselves appealed against the totals.

It is scarcely necessary that we should guard ourselves against being supposed to express any opinion as to the duty or powers of the County Council under the County

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Rate Act, read in conjunction with the Valuation (Metropolis) Act, 1869, and the Local Government Act, 1888, to frame its precept to the parish of Islington, in accordance with the actual sum total of the several assessments as they appear in the list. It may be that they are under a statutory obligation to do so.

We dismiss this motion with costs, without prejudice to the powers of the vestry of Islington to bring this matter before us in any other way.

Motion dismissed (a).

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December 12.

THE LONDON COUNTY COUNCIL v. THE ASSESSMENT
COMMITTEE OF ST. MARYLEBONE.

Practice—Appeal against Totals—Alterations on Appeals against Individual Assessments—Set off—Valuation (Metropolis) Act, 1869, s. 20.

On an appeal against totals in a quinquennial valuation list, the appellants contended that the totals were too low; the respondents claimed the right to set off against any increase which might be shown to be necessary, reductions made by quarter sessions and by special sessions, on appeals against individual assessments in the same list.

Held, that the respondents were entitled to set off the reductions made on the appeals to quarter sessions.

St. Olave's Union v. St. Saviour's Union, Ryde's Rat. App. (1886-90) 176, distinguished.

Whether the respondents were entitled to set off the reductions made on appeals to special sessions, *quære*.

Statement of the practice adopted upon the hearing of an appeal against totals.

APPEAL against totals.

The appellants alleged that over 3,000 hereditaments in

(a) Subsequently the vestry obtained leave to serve a notice of appeal against totals, and the procedure adopted in *Vestry of St. Pancras v. Assessment Committee of St. Pancras*, *supra*, p. 233, was followed, save that in the *Islington Case* notice of the appeal was given to the London County Council, who appeared, but did not oppose the making of the alteration asked for.

the parish of St. Marylebone were under-assessed in the quinquennial valuation list as finally approved by the assessment committee in 1890. The appeal was not finally determined by the Court, and it is only necessary to report the arguments and the decision upon a question of law, which arose in the course of the proceedings, out of the following facts:—

Eight appeals to special sessions were entered against the assessment of individual hereditaments in the quinquennial valuation list: these appeals were heard in December, 1890, and resulted in a reduction of the gross and rateable values appealed against, amounting in the aggregate to 342*l.* and 286*l.* respectively.

Three appeals to quarter sessions were also entered against individual assessments in the same list (*a*): the appeals were heard in 1891 and 1892, the times prescribed by s. 42 of the Valuation (Metropolis) Act, 1869, being exceeded owing to the number of appeals entered against the quinquennial list of 1890. Reductions were made in each case, amounting in all to a reduction of the gross values by 6,037*l.*, and of the rateable values by 4,781*l.*

A question was raised on the hearing of the appeal against totals, whether it was open to the assessment committee, upon the hearing of that appeal, to set off the reductions above referred to against any increase which the London County Council might prove to be necessary in respect of the under-assessment of other hereditaments. The Court directed that this question should be determined before the hearing of the appeal was further proceeded with.

Poland, Q.C. (A. H. Bodkin with him), for the respondents: The set-off ought to be allowed. The notice of appeal alleges that the totals in the valuation list are too low; the respondents contend that they are correct. That

(*a*) One of these appeals was brought by the Gas Light and Coke Co., *vide supra*, p. 204.

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is the only issue before the Court on this appeal. The Court have therefore to inquire what are the true totals of the gross and rateable values of the several hereditaments in the list. It would be absurd and inequitable, in that inquiry, not to look at the alterations made by this Court and by the special sessions in the assessments of some of those hereditaments.

F. M. White, Q.C. (*H. E. Ivory* with him), for the appellants: The set-off ought not to be allowed on this appeal. It is a mere accident that the hearing of this appeal has been delayed until after the decision of the most important of the appeals relating to individual hereditaments, viz., that by the Gas Light and Coke Co. (*vide supra*, p. 204), in which judgment was given in February, 1892. Had the appeal against totals been decided in March, 1891, the decision in the Gas Company's appeal could not have affected it. The assessment committee are estopped from saying that the assessments fixed by themselves are wrong, and the decisions of this Court on appeals against those assessments are binding only on the parties to such appeals; they are *res inter alios actæ*. Such decisions do not affect the totals, which can be altered only on an appeal against totals: see *R. v. Guardians of Woolwich Union*, *infra*, p. 279; [1891] 2 Q. B. 712. If necessary, another appeal must be entered, as was done in *Vestry of St. Pancras v. Assessment Committee of St. Pancras*, *supra*, p. 233. [Sir P. H. EDLIN: The respondents seek, not to alter the totals in consequence of the alterations as to details, but to set off the reductions against any claim that the appellants may establish for an addition.] The set-off now claimed is not mentioned in the respondents' case, and this appeal must be determined by the state of things existing at the date when it was entered, and then the assessment committee would have been estopped from disputing the accuracy of their own list, as was held in *St. Olave's Union v. St. Saviour's*

Union, Ryde's Rat. App. (1886-90) 176; compare also *Overseers of St. Olave v. Assessment Committee of St. Olave*, Met. Rat. App. 287, 290. In any event, the respondents are not entitled to set off the effect of a decision at special sessions, because by s. 20 of the Valuation (Metropolis) Act, 1869, such a decision "shall not of itself in any way alter the totals of the gross or rateable value of the list as settled by the assessment committee, but may form a reason for an appeal against such totals to the assessment sessions and superior Court as hereinafter mentioned." [Sir P. H. EDLIN: I should prefer that we should confine our judgment to the decisions of this Court, if the respondents are prepared so to limit the question.]

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Poland, Q.C., in reply: The amount of the reductions made at special sessions is so small that the respondents are content to withdraw them from consideration, without, however, admitting that they are not legally entitled to bring them into account. In *R. v. Guardians of Woolwich Union*, *infra*, p. 279, the Queen's Bench held only that until a total was properly altered, it was binding; and that it could be so altered only on an appeal against totals. That decision was merely a corollary from *Fulham Union v. St. Mary Abbots*, Ryde's Rat. App. (1886-90) 86, in which it was held that an appeal against totals did not affect individual assessments. Here, however, an appeal against totals has been entered, and therefore *R. v. Guardians of Woolwich Union* does not apply. The quarter sessions have power to "alter or confirm the valuation list, so far as it is questioned by the appeal, in such manner as they think just"; see s. 34 of the Valuation (Metropolis) Act, 1869. The total is questioned, and therefore the Court have power to alter or confirm it as they think just.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): We have thought it desirable that the questions arising upon the

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claim of the respondents to set off the amount of certain reductions made by this Court in assessed values against any increase affecting the total which we might adjudge upon this appeal, should be argued and decided before the trial of the case proceeded further. We are clearly of opinion that the respondents are entitled to have these reductions taken into account in determining the proper total. They are, strictly speaking, the result of judgments affecting the issue raised in this appeal, namely, the sufficiency of the total, what is the true total; and it would be contrary to every principle of equity and every principle governing the levying of contributory rates to exclude them from consideration. True, the appellants were not parties to the appeals which resulted in these reductions, nor were they entitled to be heard upon the particular questions raised in those appeals; but when they framed their schedule for increases, they had cognizance that there were rated occupiers in the parish appealing to us upon the ground of excessive assessment. The appellants complain that certain specified properties have been under-valued, and that the total consequently is insufficient, and I apprehend that the assessment committee could not be allowed to array against these cases other assessments—against which there has been no appeal—upon the ground that the values assigned are too high; but their position is otherwise where there *has* been an appeal, and this Court has determined that the assessments should be reduced. The corrections consequent on the judgments in such cases have to be made in the valuation lists and initialled by the chairman. If the sum shown in the totals inscribed had been inaccurately calculated and the County Council had in consequence appealed, it would have to be corrected and made to accord with the sum total of the figures actually appearing against each hereditament. The injustice of excluding from consideration these reductions in the original list is so manifest that an illustrative example is scarcely needed. We may find one in the parish of

Islington (the assessment committee of which was before us this morning), where the excessive rating of the Gas Light and Coke Company's mains and pipes was reduced by upwards of 25,000*l*. A 5 per cent. rate upon this sum for the quinquennial period would amount to 6,250*l*., that is to say, to so much more than the proper contribution of the parish to the county rate, if the total were not corrected so as to make it accordant with the actual assessment. Mr. White admits that upon an appeal made specially for the purpose, we should have to reduce the total by the amount of these reductions; and therefore the objection to their being calculated upon the present appeal is purely technical. There is the argument *ab inconvenienti*, and the avoidance of circuity of proceeding. The presentment of this appeal may result in making a second correction unnecessary.

We shall allow the set-off, and as the figures are not disputed, we may take the amount as it has been stated by the respondents, viz., a reduction in the gross value of 6,037*l*., and in the rateable value of 4,781*l*. The costs of this day, so far as it has been devoted to the argument of this question, will be reserved (*a*).

(*a*) It may be convenient to add a note as to the practice and procedure adopted on the hearing of this appeal. The appellants, in a schedule to their case, set out a list of 3,289 assessments, alleged to be too low, with columns showing the gross and rateable values as appearing in the valuation list, and the gross and rateable values as contended by the appellants. This schedule was subsequently divided into seven sub-schedules, in which the assessments were grouped so as to collect together those to which the same, or similar, contentions applied. The first sub-schedule, for example, contained "cases in which the original occupiers' returns, made in pursuance of ss. 55 and 57 of the Valuation (Metropolis) Act, 1869, showed with other evidence that the assessments in the valuation list were too low." As to this sub-schedule, the appellants subpoenaed the occupiers to produce their leases, &c., and also gave expert evidence as to a large number of hereditaments. The respondents' evidence was to have been reserved until the appellants' evidence upon all the alleged cases of under assessment had been given, but the hearing was suspended in order to enable the parties, if possible, to agree to a settlement before the appellants' evidence was completed. On the production of the leases the amount of rent actually paid in some instances would *prima facie* have warranted (according to the appellants' contention) an increase larger than that claimed in the appellants' case. They were, however, content to abide by the increase originally claimed. The hearing extended from January 11, 1892, to January 18, 1893, and occupied the whole or part of about twenty days.

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FRASER v. CITY OF LONDON UNION.

February 13.

*Supplemental List—Alteration during preceding Twelve Months—
 Quinquennial List—Alteration of Assessment—Failure to give
 Notice to Occupier—Validity of List—Valuation (Metropolis)
 Act, 1869, ss. 9, 46.*

The assessment committee, on revising the quinquennial list made in 1890, increased the appellant's assessment, but the notice of such increase required by Valuation (Metropolis) Act, 1869, s. 9, was not received by the appellant until the end of January, 1891. On November 20, 1891, no alteration in value having taken place, the overseers entered the appellant in a provisional list, reducing his assessment by 3%. In revising the supplemental list made in 1892, the assessment committee did not strike out the appellant's name, but restored the assessment fixed by them in revising the quinquennial list, on the ground that (as the appellant admitted) no alteration in value had taken place during the preceding twelve months, as required by Valuation (Metropolis) Act, 1869, s. 46.

Held that no alteration in value having taken place during the preceding twelve months, the entry in the supplemental list must be struck out.

Quære whether the appellant, not having had notice of the alteration of his assessment in the quinquennial list, was bound by it.

APPEAL against a supplemental list made in 1892.

In the quinquennial list made in 1890, the overseers assessed the appellant in respect of No. 10, Vine St. at 40% gross and 34% rateable; and the assessment committee altered the figures to 60% gross and 50% rateable. Notice of this alteration was sent out on October 29, 1890, but (as the Court found on the evidence) was not received by the appellant until the last week in January, 1891. [By s. 42 of the Valuation (Metropolis) Act, 1869, the assessment committee should have finally approved the quinquennial list before November 1st, 1890, and notice of appeal to quarter sessions should have been given before January 14, 1891. By s. 9, where the assessment committee make such an alteration as was made in this case, "the overseers shall, immediately after the re-deposit of the list, serve on the occupier a notice of the gross and rateable value inserted in the valuation list."]

On February 9, 1891, the appellant gave to the assessment committee, the overseers, and the surveyor of taxes, notice of objection to the assessment, but nothing further was done in pursuance of this notice. When the first rate was made upon the quinquennial list, the appellant refused to pay. A distress warrant was applied for, and the magistrates held that they had no jurisdiction to inquire into the validity of the valuation list, and must enforce the rate. The appellant accordingly paid under protest. On November 20, 1891, the overseers entered the appellant in a provisional list, reducing the rateable value of his premises by 3%, although, as was admitted by all parties, there had been no alteration in value in the course of the current year. The appellant was also entered in the supplemental list made in 1892, but the assessment committee restored the amounts as fixed by them in revising the quinquennial list, on the ground that no alteration in value had taken place.

By the Valuation (Metropolis) Act, 1869, s. 46, "In each of the first four years of [the quinquennial] period, a supplemental list shall, if necessary, be made out . . . and shall show all the alterations which have taken place during the preceding twelve months, but shall contain only the hereditaments affected by such alterations."

By s. 47, "If in the course of any year the value of any hereditament is increased by the addition thereto or the erection thereon of any building, or is from any cause increased or reduced in value [*sic*], the following provisions shall have effect." Then follow provisions for making a provisional list which, by sub-s. (8), "shall continue in force until the first list (supplemental or other) which is subsequently made comes into force."

A. D. Lawrie for the appellant: The appellant could not appeal against the increase in the quinquennial list, because he did not receive notice in time; nor against the supplemental list made in 1891, because he was not

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included therein. He cannot be entered in the supplemental list made in 1892, because no alteration has "taken place during the preceding twelve months" as required by the Valuation (Metropolis) Act, 1869, s. 46.

R. Cunningham Glen for the respondents: The validity of the quinquennial list cannot be questioned; for by the Valuation (Metropolis) Act, 1869, s. 45, "the valuation list for the time being in force shall be deemed to have been duly made in accordance with this Act." The assessment committee entered the appellant in the supplemental list of 1892, to give him an opportunity of appealing against the amount of his assessment. It was their duty, moreover, to enter him in a supplemental list, inasmuch as he had been put in a provisional list. As there had been no alteration in value within the twelve months, the overseers were wrong in reducing the appellant's assessment, and the assessment committee were right in restoring the figures appearing in the quinquennial list. The right of appeal is given by the Valuation (Metropolis) Act, 1869, s. 32, to a person "aggrieved by any decision of the assessment committee." The decision in the present case is right in law. If the appellant does not seek to go into the question of amount, and insists on striking out his name from the supplemental list, the only result will be that he will have to pay rates on the same assessment, as it appears in the quinquennial list.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): This is as clear a case as was ever brought before the Court. It was discovered, after the application for a distress warrant, that a blunder had been committed. No entry was made in the list of 1891, and another list was made in 1892. Why should the overseers reduce the amount of the assessment? They had no right to alter the figures at all. There was no reason at all for an entry in the supplemental list, because there had been no alteration in value. The inser-

tion in the list of 1892 may have been in good faith, but was entirely unauthorized and illegal. It must be erased altogether. We do not touch the quinquennial list; that list will stand, but I do not say a word as to its being valid (a).

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Appeal allowed with costs.

FRIEND v. FULHAM UNION ASSESSMENT COMMITTEE.

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 March 17.

Practice—Provisional List—Omission from Supplemental List—Time for appealing.

The appellant's property was entered in a quinquennial valuation list made in 1890. It was also entered in a provisional list made in 1892, but was omitted from a supplemental list made later in 1892. The appellant made an objection against the provisional list, but not against the supplemental list, and on January 14, 1893, gave notice of appeal against the quinquennial list of 1890.

Held, that the appeal was brought too late.

APPEAL decided on a preliminary objection arising out of the following facts:

The assessments now appealed against were entered in the quinquennial valuation list made in 1890. In 1892, the property was put by the overseers in a provisional list under s. 47 of the Valuation (Metropolis) Act, 1869, and the appellant duly made objection to that list before the assessment committee. Subsequently in 1892 a supplemental list was made, from which the assessments entered in the provisional list were omitted. The appellant made no objection to the supplemental list before the assessment committee, and on January 14th, 1893, gave notice of appeal

(a) As to the effect of the quinquennial list, compare *R. v. Middlesex Justices* [1872], L. R. 7 Q. B. 653. It seems to have been assumed in the case above reported, that the provisional list would not continue in force after the commencement of the operation of the supplemental list. As to this point, compare *Dudin v. St. Olave's Union*, Ryde's Rat. App. (1886-90) 202, and the remarks thereon, *Ib.* pp. 33, 34.

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against the assessments appearing in the quinquennial list made in 1890.

Macmorran for the respondents took the preliminary objection that the appeal was brought too late.

Bowen Rowlands for the appellant: If necessary I ask the Court to extend the time for appealing against the quinquennial list of 1890. Up to 1892, it was the practice, if property was entered in a provisional list, to put it into the next supplemental list subsequently made. If this course had been followed in the present case the appellant could have appealed against the supplemental list, but the overseers, acting in obedience to a direction of the county council, omitted the appellant. It seems to have been a mistake to appeal against the quinquennial list; the appeal should have been against the supplemental list.

The CHAIRMAN (Sir P. H. Edlin): The appellant in his own case says this is an appeal against the quinquennial list. He is therefore out of Court on his own statement. The appeal must be dismissed with costs (*a*).

Objection allowed.

(*a*) It is submitted that the appellant's proper course was to object to the "omission" of his assessment from the supplemental list, under s. 11, which by s. 46 (3) is applied to a supplemental list: and against the decision on such an objection he could have appealed under s. 32: this was done in *East and West India Docks Co. v. Poplar Union*, Met. Rating App. 355: 13 Q. B. D. 364; in *Dudin v. St. Olave's Union*, Ryde's Rat. App. (1886-90) 202; and in *British Equitable Assurance Co. v. City of London Union*, *Ib.* p. 229.

It is also submitted that, inasmuch as no objection to the supplemental list had been made before the assessment committee, it was hardly possible for the quarter sessions, in *Friend v. Fulham Union*, to order a fresh notice of appeal to be given under s. 34 of the Valuation (Metropolis) Act, 1869: since the appellant could not have brought herself within s. 32 of that Act, as "being aggrieved by a decision of the assessment committee on an objection made before them."



GAS LIGHT AND COKE COMPANY *v.* HACKNEY UNION.1893.
March 28.

*Supplemental List—Gas Company—Increase in Price of Gas—
Alteration in Rateable Value—Valuation (Metropolis) Act, 1869,
s. 46.*

The appellants (a gas company) appealed against the quinquennial list made in 1890, and obtained a reduction of their assessment. They subsequently increased the price of gas from 2*s.* 9*d.* to 3*s.* 1*d.* per 1,000 feet, as from December 31st, 1891. The respondents increased the appellants' assessment, and entered them in a supplemental list made in 1892. On appeal to quarter sessions, it was shown that in the parish in question the appellants' receipts had increased, and that the quantity of gas sold, and the cost of making gas per 1,000 feet, had decreased within the twelve months prior to the making of the supplemental list.

Held, that as the Court had before it, upon the hearing of the appeal against the quinquennial list, the statutory power of the appellants to raise the price of gas, no sufficient "alteration" within the meaning of the Valuation (Metropolis) Act, 1869, s. 46, had been shown to warrant the making of a supplemental list.

APPEALS against supplemental lists made in 1892 for the parishes of St. John, Hackney, and Stoke Newington in the Hackney Union. There had been appeals by the same appellants against the quinquennial lists made in 1890 for the same parishes, *vide supra*, p. 204. In both parishes the effect of the judgment was to reduce the assessment appealed against.

Up to June 30th, 1890, the appellants charged 2*s.* 6*d.* per 1,000 feet of gas; from that date it was raised to 2*s.* 9*d.*, and was again raised from December 31st, 1891, to 3*s.* 1*d.*

Littler, Q.C. (*Danckwerts* with him), for the appellants: To necessitate a supplemental list, there must be not merely an increase, but an unexpected increase within the last twelve months in the value of the appellants' property. There has been no alteration in the mains, but merely in the profits of the company since the quinquennial list

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came into operation. [Sir P. H. EDLIN, Q.C. : The value fixed by the judgment of this Court is *primâ facie* correct until the contrary is shown ; the burden of proof is on the respondents.]

Balfour Browne, Q.C. (*Walter C. Ryde* with him), for the respondents : It is admitted that the respondents must show an increase in lettable value. In the appeal against the quinquennial list, this Court could not in law, and did not in fact, take into account a rise in price beyond 2s. 9d. Mr. Eve attempted to do so (*vide supra*, p. 212), and his valuation made on this basis would have supported the assessments appealed against, whereas the Court held that they were too high. Moreover the appellants themselves contended (*vide supra*, p. 223) that the Court could not on that appeal take into account a future rise in price, on the ground that when it took place a supplemental list could be made. Moreover, on the same appeal, after argument but before judgment, evidence was tendered of the increase in price as from December, 1891, and was rejected by the Court : *vide supra*, p. 223. The respondents can show that the appellants' receipts have risen, and their expenses have fallen within the last twelve months. No doubt the Court on the former appeal had before them the power of the appellants to raise the price ; that was not enough, because a rise in price may, by reason of competition, result in a loss to the company. The Court has now before it two new ascertained facts ; (1) that the price has been increased above 2s. 9d., and (2) that the increase has resulted in increased profits. It is not necessary for the making of a supplemental list that there should be an alteration of the hereditament itself : in *East and West India Docks Co. v. Poplar Union* [1884], Met. Rat. App. 355 ; 13 Q. B. D. 364, the docks remained of the same capacity, but a diminution of the number of ships was held sufficient.

Mr. William Eve was called by the respondents and tendered in evidence a calculation similar in form to that

set out above, p. 212, but based upon the altered receipts and expenditure. This evidence was objected to by the appellants, and was rejected by the Court.

Mr. Eve then showed that, in the parish of St. John, Hackney, the actual receipts for the year ending June 30th, 1891, were 130,980*l.*, and for the year ending June, 1892, were 138,093*l.* In the same two years respectively, the quantity of gas sold in the same parish was 903,049,000 feet and 899,065,000 feet. In the same two years, the average cost of gas to the company was 24*·*549*d.*, and 24*·*253*d.* respectively. Consequently, the company had sold a smaller quantity of gas in the second year, manufactured at a smaller cost per 1,000 feet, and had yet earned *increased* receipts. There had been a fall in the cost of coal. Mr. Eve regarded these facts as showing a most decided increase in rateable value. [It is unnecessary to state the figures relating to Stoke Newington.]

The appellants were not called upon to support their appeals.

The CHAIRMAN (Sir P. H. Edlin, Q.C.): These appeals must be allowed. It is not necessary to go into the figures put before us by Mr. Eve, showing the business of the company since the case was last before us. It appears to us that Mr. Balfour Browne passes by the substantial question in this case. The first question is whether there has been any substantial alteration within the 12 months. Mr. Balfour Browne confuses an alteration in the property itself with an alteration in the method of management. Mr. Eve admits that the powers now acted upon existed at the time of our former decision: and it cannot be denied that all those powers would then have to be considered. If it could be said that the Court were wrong before, there would be a possible ground for an alteration. The question before us is, whether there has been such an alteration as to force us to make a re-valuation; the respondents cannot ask us to do so, without asking us to take into account again

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all the circumstances affecting the appellants' property throughout their entire system. This would amount to an entire evasion of the principle of the Valuation (Metropolis) Act, 1869, that there should be a re-valuation only once in 5 years except in the case of a material increase or decrease within the last 12 months. If the company had sought to show that their profits had fallen, the respondents would no doubt have said, all this was taken into account at the quinquennial valuation. There has been no alteration in the property itself, but only a different system of management; and I have no hesitation in saying that this attempt to re-open the valuation has signally failed, there being no substantial alteration. The appeals will be allowed with costs, and the entries in the supplemental lists will be erased.

Appeals allowed.

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GAS LIGHT AND COKE COMPANY v. WESTMINSTER UNION.

*Appeals relating to several Parishes — Apportionment of Costs—
 Surveyor's Fees.*

The Gas Light and Coke Co. appealed against the assessment of their mains in a large number of parishes. The appeals were heard together. The Westminster Union retained a surveyor, who was afterwards retained to make a valuation for Chelsea and Islington. The appeals as to Westminster and Chelsea were dismissed with costs, the appeal as to Islington was allowed with costs. In taxing the costs of the Westminster Union, the taxing officer found what was a reasonable fee for the services rendered by the surveyor to the three parishes together, and divided it in proportion to rateable value.

Held, that the principle of apportionment was right.

MOTION for review of taxation of costs in one of the numerous appeals by the Gas Light and Coke Co., which were heard together, *vide supra*, p. 204.

The Westminster Union retained a surveyor to make a valuation of the appellants' property. The same surveyor was subsequently retained by the assessment committee of Chelsea and Islington to make a valuation. The three appeals were heard together, and the effect of the judgment was that the appeals in Chelsea and the Westminster Union were dismissed with costs, and the appeal in Islington was allowed with costs. The Westminster Union paid to their surveyor 472*l.* for his services, and it was not suggested that this was an excessive amount. On taxation, the taxing officer took into account the fact that the same surveyor was retained in three parishes, and considering that the main question in all the appeals was to determine the rateable value of the appellants' property as a whole, found that 613*l.* was a reasonable sum to be paid to the surveyor for his services to the three parishes together, and divided that sum among the three parishes in proportion to the rateable value of the appellants' property in each parish. The effect of this was to reduce the fee allowed in the case of the Westminster Union to 165*l.*

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Balfour Browne, Q.C., in support of the motion: The effect of the principle adopted is that if a parish retain an experienced surveyor who is likely to be retained by other parishes, it is almost certain that they will fail to recover a portion of their costs *bonâ fide* incurred.

Danckwerts, for the appellants: The 'parishes should have combined to retain one surveyor. The taxing officer rightly considered that all the appeals raised but one issue.

Balfour Browne, Q.C., in reply: It was found impossible to combine with other parishes. So much of the surveyor's fee as is attributed to the Islington appeal will not be borne by the appellants at all, as they receive costs in that appeal.

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The CHAIRMAN (Sir P. H. Edlin, Q.C.): We are clearly of opinion that the taxing master acted on the right principle, and I have no hesitation in saying that, on the facts laid before him, he would have failed in his duty if he had not taken notice of the fact that the same surveyor was retained in several appeals. Nothing has been shown to warrant our interfering with a proper exercise of his discretion.

Motion dismissed.

Rating Appeals.

Part II.

CASES

HEARD BY THE

QUEEN'S BENCH DIVISION,

BY THE

COURT OF APPEAL,

AND BY THE

HOUSE OF LORDS,

1891—1893.

SHOWERS *v.* ASSESSMENT COMMITTEE OF CHELMSFORD
UNION.

Police Station—Residence of Police Officers—Rateability.

The chief constable and other police officers of the county of Essex resided in parts of a block of buildings belonging to the county. The premises occupied three sides of a square, and the front door of each residence opened into one centre court. The whole was surrounded by a wall, and the buildings were under one roof. Besides the officers' residences, the buildings comprised certain stores for police clothing, &c., which were not rated; but there were no cells for prisoners. The whole of the premises were used solely for the purposes of the police of the county, the chief constable being required to reside there. Each officer paid rent for the premises in which he resided, such rent being deducted from his pay.

Held, upon the facts, that the premises were not a police station,

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and did not constitute a single building used as a whole for public purposes so as to be exempt from rateability; and that each of the officers had a separate beneficial occupation of his residence in respect of which he was rateable.

CASE stated for the opinion of the Queen's Bench Division under 12 & 13 Vict. c. 45, s. 11.

The following are the material facts stated in the case: The appellants are the chief constable of the county of Essex, the deputy chief constable, a superintendent of police, and a sergeant of police, all of whom resided in buildings called Springfield Court, in the parish of Springfield in Essex. In the rate appealed against, the several appellants were entered as occupiers of "house and garden" or "house"; and in the column headed "name of owner," the "county of Essex" was entered. The appellants objected to the rate on the ground that the premises were not rateable, as they were part of a county police station, and occupied solely for the purposes of the Crown. The assessment committee confirmed the assessment, and this case was stated.

The constabulary force for the county of Essex was appointed under 2 & 3 Vict. c. 93, and the county was divided into police districts, and station houses and strong rooms were provided under 3 & 4 Vict. c. 88. The parish of Springfield is situated within one of these police districts, and Springfield Court is about a mile from the county town and borough of Chelmsford, being in fact the headquarters of the Essex constabulary. There are not now any police cells used for the reception and detention of prisoners at Springfield Court, but the county police make use of a portion of the ground floor of the Shire Hall in Chelmsford, which is county property, as a police office. This, however, is not provided with sleeping accommodation, being nothing more than a space partitioned off and supplied with desk and office fittings. The cells for the detention of prisoners whilst in the custody of the police are also in the Shire Hall. The office and cells are

used both by day and night. There are no other premises in the Chelmsford Union used for police purposes than those before mentioned.

The whole of the premises called Springfield Court belonged formerly to the justices of the peace for the county of Essex, but are now, under the provisions of the Local Government Act, 1888, vested in a joint committee consisting of an equal number of county justices and county councillors. The whole of the premises are used exclusively for the purposes of the police, and consist of the chief constable's house, containing dining-room, drawing-room, morning-room, library, bedrooms, kitchen, with stables, coach-house, the usual offices, and a garden: of the deputy chief constable's house, containing dining-room, drawing-room, bedrooms, kitchen, and the usual offices, and a garden: of a superintendent's quarters, containing a sitting-room, living-room, bedrooms, and kitchen; of a sergeant's quarters, containing sitting-room, kitchen, bedroom, and scullery; and also of clerks' offices, store-rooms for police clothing, &c., parade-room, stables, coach-house, and other outbuildings. The chief constable, the deputy chief constable, and the two other officers, and the wives and children of those who are married, live and sleep at Springfield Court. The premises occupy three sides of a square, and open into one centre court, and have gardens adjoining. The whole building is under one roof, the front doors from all the separate quarters opening into the court. The whole of the premises and grounds are enclosed by a large brick wall, so that they can only be entered by the main gate, or through the back way to the stable yard. All the premises are used solely by the police force for the purposes of the county constabulary, the chief constable being bound to reside there as a condition of his appointment. Nothing more is provided than is necessary for the proper accommodation of the several officers, taking their respective ranks in life into consideration. Only the portions of

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the premises in which the chief constable and the other three officers before mentioned reside are rated. Each officer pays a rack-rent for the premises occupied by him, such rent being deducted from his pay, and the deduction is applied in aid of the police rate.

If the premises are rated, the rate will be paid out of the police rate. In consequence of the exemption claimed, Springfield Court has never contributed anything to the poor and other rates, except a rent of 10% per annum for a supply of water.

[Before the coming into operation of the Local Government Act, 1888, a grant was made by the Treasury in aid of the police rate, if the police were reported by a government inspector to be in a state of efficiency.

This effect of the Local Government Act, 1888, ss. 24 and 25, is that the grant in aid is abolished, and the proceeds of the local taxation licences, &c., are now given to the county in lieu of grants out of the Exchequer in aid of local rates which were formerly made; but if the government inspector reports that the county police have not been properly maintained, the county forfeits to the Exchequer, out of the proceeds of those licences, a sum equivalent to the grant which would have been made under the old system.]

The question for the opinion of the Court was whether the appellants or any of them were liable to be rated in respect of their occupation of the said premises.

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Channell, Q.C. (*Woollett* with him), for the appellants: The result of the decided cases is that a police station occupied by the county for police purposes is not rateable; but that if the county have not room for their officers and hire rooms or houses outside the police station, such rooms or houses are rateable. The question is, Within which category do the appellants come? The premises are the headquarters of the county constabulary. If the premises

as a whole belong to the county, and are used for county purposes, the Court will not hold that particular rooms on the premises occupied by the police officers are rateable. The officers here have an occupation subordinate to that of the county; they are rather in the position of lodgers than of householders. The occupation of the Crown (to which exemption from rateability is attached) is equivalent to occupation for the public government of the country. The present case is exactly like *Lancashire Justices v. Overseers of Stretford* [1858], E. B. & E. 225, where the county justices provided buildings, and let parts to police officers at a rent deducted from their wages, yet the whole was held exempt. [LAWRANCE, J.: Is not this case like *Gambier v. Overseers of Lydford* [1854], 3 E. & B. 346?] In that case premises outside the precincts of a prison, such as the residence of the chaplain, &c., were held not exempt; but here all the buildings make one non-rateable integer, viz., the headquarters of the county police. [DAY, J.: This is rather a nondescript building, not an integral part of the police station.] In *Macharg v. Stoke-upon-Trent* [1884], 48 J. P. 775, it was held that a police officer was rateable in respect of a residence provided for him out of the county rate, but that was because it was a cottage two miles from the police station. In *Martin v. West Derby* [1883], 11 Q. B. D. 145, a police superintendent's house was held rateable, because it formed no part of the police station. [He also cited *Coomber v. Justices of Berkshire* [1883], 9 App. Cas. 61; *R. v. St. Martins, Leicester* [1867], L. R. 2 Q. B. 493.]

W. H. Grubbe and *W. B. Duffield*, for the respondents, were not heard.

DAY, J.: The question in this case is very similar to that raised in *Durham County Council v. Chester-le-Street*, *infra*, p. 267. I must not be supposed to dissent from the cases which have been cited to us. I agree that if

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a building, as an integral whole, is exempt as being occupied by the Crown, the persons who occupy parts of the premises as servants of the Crown are not liable to be rated. But here we have property which to a large extent consists of buildings separately occupied by persons connected with the police, who reside there for convenience to themselves, and for the performance of their police duties. No doubt it is convenient that police officers should live near their work, and that they should live together. But here the rateability of Springfield Court as a whole is the very question in dispute, and the greater part of the premises are occupied by the officers' houses. Possibly small parts, such as the stables, the parade ground, and the stores for police clothing, are exempt. But these parts do not constitute an integral whole which is exempt from rating; they are merely parts of one building, the rateability of which as a whole is in question. The cases cited do not apply. The question here is whether buildings occupied by police officers for the residence of themselves and their families, and for which they pay rent, are not rateable? I do not think that the fact that one wall goes round the whole of the houses, parade ground, and stables, can make them exempt. If the houses were outside the wall, it has been decided that they would not be rateable. No doubt police officers live there, but these premises are not a police station where officers are stationed for the performance of police duties, and they are therefore not within the exemption.

LAWRANCE, J.: I am of the same opinion. I think this case is governed by *Gambier v. Overseers of Lydford* [1854], 3 E. & B. 346. I also think that it makes no difference that the building is now vested, under the Local Government Act, 1888, in the joint committee of the justices and county councillors, instead of in the justices alone. We give judgment for the respondents.

The appellants appealed to the Court of Appeal.

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Channell, Q.C., and *Woollett*, for the appellants, cited, in addition to the cases cited in the Court below, *R. v. Stewart* [1857], 8 E. & B. 360; and *R. v. Fuller* [1855], 8 E. & B. 365, n.

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Grubbe and *Duffield*, for the respondents, were not called upon.

LORD ESHER, M.R. : The question in this case is really a question of fact; and I have no doubt upon the facts stated that the appellants are rateable. It has been argued that they are servants or lodgers, but it is obvious that they are occupying tenants. It has been said that they occupy parts of a building which is as a whole used for public purposes, so that the occupation of the whole must be deemed to be the occupation of the Crown. In my opinion, Springfield Court is not one building; each of the appellants occupies his residence as a separate tenement. And, further, even if Springfield Court be one building, it is not a police station, and I doubt whether it can be said to be used for public purposes. In *Martin v. West Derby Union* [1883], 11 Q. B. D. 145, it was held that buildings occupied by public servants, outside a building used for public purposes, were rateable. Lord Coleridge there pointed out that where there are public buildings, like a prison, all occupied together, not by any individual personally, but by some public body as representing the Crown, who hold the whole as the Crown's building, or for the purpose of the government of the country, the Court will not look at whether a particular room or set of rooms is occupied so as to give a benefit to the persons who occupy, but if such room or rooms form an integral part of a whole which in itself is not rateable, the persons who so occupy are not rateable. The facts of the present case do not bring the appellants within this

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BOWEN, L.J. : I am of the same opinion. The appellants are rated as the beneficial occupiers of certain tenements forming part of a block of buildings. It has been said on behalf of the appellants that they are not occupiers at all, but that the premises form part of one large building used as a police station, and occupied in its entirety by the county ; and therefore that the Court will not look closely to see whether any part is occupied for the benefit of any particular person. In my opinion, upon the facts stated, Springfield Court is not one single building occupied by the county, but consists of several distinct tenements occupied by separate persons. But assuming that there is a beneficial occupation of these separate tenements, there remains the question whether the occupation is for public purposes, so as to come within the exemption stated by Lord Watson in *Coomber v. Justices of Berkshire* [1883], 9 App. Cas. 61, following the rule laid down in *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, that is to say, an occupation ascribable to a bare trust for purposes required and created by the government of the country. It seems to me that the appellants' occupation does not come within this exemption ; they occupy for their own purposes, and not for the purposes of the government of the country. It was argued, on the authority of *Martin v. West Derby Union* [1883], 11 Q. B. D. 145, that when once a building is shown to be used as a whole for public purposes, the Court will not consider whether there is a beneficial occupation of a particular part of that building. But here there is no one building used as a whole for public purposes. Moreover, *Martin v. West Derby Union* did not decide that everything within the curtilage of a building used for public purposes is exempt from rating. There may be a beneficial occupation for private purposes of part within a public building.

FRY, L.J.: I am of the same opinion. The building here is not used as a whole for public purposes. It contains a series of private dwellings occupied by the appellants.

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Appeal dismissed.

DURHAM COUNTY COUNCIL v. ASSESSMENT COMMITTEE OF
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Certified Industrial School—Rateability—Occupation for the Purposes of the Crown—County Council—Industrial Schools Acts, 1866, 1872 (29 & 30 Vict. c. 118; 35 & 36 Vict. c. 21)—Local Government Act, 1888 (51 & 52 Vict. c. 41).

A county council is rateable in respect of a certified industrial school established by justices under the Industrial Schools Acts, 1866 and 1872, and vested in the county council under the Local Government Act, 1888.

SPECIAL case stated by consent, and by order of Lawrance, J. (under 12 & 13 Vict. c. 45, s. 11), after notice of appeal against an assessment of 98% gross and 92% rateable value, in respect of property described as "Land, School, and Hind's house," and used for the purposes of an industrial school.

The material facts stated in the case are as follows:—

7. "In 1881 the court of quarter sessions for the county of Durham, professing to act as the prison authority for the county, resolved to establish a county industrial school under the Industrial Schools Acts, and submitted to the Home Secretary the plans of a farm, partly freehold and partly copyhold (being the farm mentioned in the assessment), which they proposed to purchase for the purpose. The Home Secretary signified his approval of the intended purchase, and by indenture and surrender, both dated July 6, 1883, the farm was conveyed to the clerk of the peace for the county of Durham, and his successors in

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office, upon trust for the purposes of the Industrial Schools Acts, 1866 and 1872. The indenture recited the purchase of the farm by quarter sessions as the prison authority, and the approval of the Home Secretary as before stated."

8. "The purchase money of the farm, and the cost of the buildings, were paid out of moneys borrowed by the county justices under the Prisons Authorities Act, 1874, on the security of the county rate."

9. [A certificate of fitness for reception of children was given by the Home Secretary under s. 7 of the Industrial Schools Act, 1866, on June 29, 1885. The school was opened on July 2, 1885, and had since continued as a certified industrial school.]

10. "In addition to officers' apartments, the school comprises accommodation for 150 boys, including a cottage hospital and workshops in which they are taught trades . . . by schoolmasters who form part of the regular staff. There is also a hind's house in which a farm bailiff resides, under whose direction the boys are employed in tilling the farm. The farm and the buildings above mentioned are of a reasonable size having regard to the purposes for which they are required, and afford no accommodation further than such as is essential for the proper employment and education of the boys. The revenue of the school consists (1) of grants in aid paid by the government under the Industrial Schools Acts; (2) of payments in respect of boys committed to the school, but not at the cost of the county; and (3) of the proceeds of the boys' work and of the sale of the surplus produce of the farm, the bulk of which produce is, however, consumed in the school. These sums together have not been in any year sufficient to defray the expenses of the school, and a considerable sum has been raised annually out of the county rates to meet the deficiency."

11. "Until April 1st, 1889, the school was under the management of the quarter sessions, but on that day the Local Government Act, 1888, came into operation, by sect. 3 (vii) of which all business done by quarter sessions or any

of its committees in respect of the establishment and maintenance of, and the contribution to industrial schools was transferred to the county council. Since the last-mentioned day, it has been assumed, as between the county council and quarter sessions, that the effect of the Act is to transfer the management also of the school to the county council, and the school has in fact been managed by the county council; but there has been no fresh appointment of a superintendent, although some changes have been made among the minor officers. The usual deficiency was made up last year, as heretofore, out of the county rate."

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"The questions for the opinion of the Court are:—

"(1) Are the above-mentioned premises liable to be rated to the poor rate?

"(2) Is the county council in occupation of the said premises?

"(3) Is the county council in such occupation of the said premises as to render the county council liable to be rated?

"(4) If yes, is the rateable value properly entered in the said rate?"

By the Prison Act, 1865 (28 & 29 Vict. c. 126), s. 5, as respects any prison belonging to any county having a separate court of quarter sessions, the justices in quarter sessions assembled are the prison authority for the purposes of that Act; and, by s. 8, all expenses incurred in carrying into effect the provisions of that Act shall be defrayed out of the county rate.

By the Prison Act, 1877 (40 & 41 Vict. c. 21), s. 4, all expenses incurred in respect of the maintenance of prisons shall be defrayed out of moneys provided by parliament.

By the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 4, the term "prison authority" has the same meaning as in the Prison Act, 1865; by ss. 6 and 7 of the Act of 1866, an inspector of prisons is to be appointed by the Secretary of State as Inspector of Reformatory and Industrial Schools, and on his report the Secretary of State may certify an industrial school to be fit for the reception

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of children. By ss. 12 and 13, a prison authority may contribute towards the maintenance, alteration, establishment, &c. of an industrial school, subject (in certain cases) to the approval of the Secretary of State. By ss. 44 and 45, the Secretary of State may withdraw, or the managers of the school may resign, a certificate. By s. 50, expenses incurred by a prison authority in carrying into effect the provisions of the Industrial Schools Act, 1865, shall be deemed expenses incurred by that authority in carrying into effect the provisions of the Prison Act, 1865.

By the Reformatory and Industrial Schools Acts Amendment Act, 1872 (35 & 36 Vict. c. 21), s. 7, the prison authority are themselves authorized to undertake anything towards which they were authorized by s. 12 of the Act of 1866 to contribute.

The following Acts and sections were also referred to in the case or in the arguments:—the Prisons Authorities Act, 1874 (37 & 38 Vict. c. 47), and the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), ss. 10, 11, 29, and 32—34.

Lawson Walton, Q.C. (*Simey* with him), for the appellants: The industrial school is not rateable. It was established by the county justices acting as a "prison authority": see ss. 4, 12 of the Industrial Schools Act, 1866, and the Prison Act, 1865, s. 5 (*supra*, p. 269). Children are sent to it by order of justices, are detained in it against their will, and it is an offence to escape from it: see ss. 14, 32—34 of the Industrial Schools Act, 1866. The school is, in effect, a prison, and a prison is not rateable: see *Gambier v. Overseers of Lydford* [1854], 3 E. & B. 346. "Where property is occupied for the purposes of the government of the country, including under that head the police and the administration of justice, no one is rateable in respect of such occupation": see *Jones v. Mersey Docks* [1865], 11 H. L. C. at p. 464. In *Coomber v. Berkshire Justices* [1883], 9 App. Cas. 61, it was held that assize courts and a county police station were exempt from

income tax (and, therefore, also from poor rate). In *West Bromwich School Board v. Overseers of West Bromwich* [1884], 13 Q. B. D. 929, the Board were held rateable in respect of schools of which they were the owners, solely on the ground that they had power to let them under s. 22 of the Elementary Education Act, 1870, the principle being that although while the schools were in the hands of the Board there could be no profit, and therefore no beneficial occupation, yet the power to let made it possible to obtain a hypothetical tenant. Bridges (where the tolls have been abolished) have been held not rateable, because it is impossible to suppose a tenant: *Hare v. Overseers of Putney* [1881], 7 Q. B. D. 223. In *Nicholson v. Holborn Union* [1886], 18 Q. B. D. 161, the Middlesex Sessions House at Clerkenwell was held exempt, on the ground that it was occupied for purposes connected with the general government of the country. In *R. v. West Derby* [1875], L. R. 10 Q. B. 283, an industrial school, and in *Tunnichiffe v. Overseers of Birkdale*, Ryde's Rat. App. (1886-90) 286, a reformatory school, were held rateable because they were established by private enterprise and maintained by private funds, which is not the case here. The justices were not a corporation and could not be rated as occupiers; and the transfer, under the Local Government Act, 1888, of the liability of the justices to the county council cannot increase it. [DAY, J.: Is not this objection to rateability an objection which applies personally to the justices? If so, it would disappear on the transfer to the county council, and an immunity which protected the justices would not protect the county council.]

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R. S. Wright (*R. Cunningham Glen* with him) for the respondents: This industrial school is capable of beneficial occupation, and is in no sense "struck with sterility." The county council are not bound to carry it on as a school for all time; they are authorized by the Industrial Schools Acts to cease to occupy it, and if the Home Secretary's

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certificate is withheld, they must do so. In *R. v. School Board for London*, Ryde's Rat. App. (1886-90) at p. 237; 17 Q. B. D. at p. 740, Lord Esher, M. R., thus states the reason for holding a board school rateable:—"The property might be, in the hands of somebody, a profitable property; it has not been rendered unprofitable by statute, and, therefore, cannot be said to be struck with sterility": see also *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, Ryde's Rat. App. (1886-90) 314; 24 Q. B. D. 197. In *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, the statutes prohibited the docks from being applied to any other purpose; here the county council can dispose of the farm. Justices can be, and have been, rated, even though they may not be a corporation: see *Lancashire Justices v. Overseers of Cheetham* [1867], L. R. 3 Q. B. 14. Judges' lodgings are exempt, as being in the occupation of the Crown; if they are let and used for other purposes, they become rateable. The important question in this case is, whether the school is occupied by the Crown. There is a clear distinction between reformatory schools which are in effect prisons, and industrial schools which are generally established by private persons, and are no part of the prison system. Boys sent to a reformatory school are, in the statute, called "offenders," and have been convicted of an "offence punishable with penal servitude or imprisonment" (a): see 29 & 30 Vict. c. 117, s. 14: whereas boys may be sent to an industrial school who have been found merely begging or receiving alms, or wandering and not having any home, or destitute, being orphans: see the Industrial Schools Act, 1865 (29 & 30 Vict. c. 118), s. 14. Moreover, under s. 26 of the same Act, the managers of an industrial school may permit a child sent there to lodge at the dwelling of his parent. A school board can contribute to, or may establish and maintain, an industrial school (see

(a) The majority of the Court of Appeal in *Tunnicliffe v. Overseers of Birkdale*, Ryde's Rat. App. (1886-90) 286, doubted whether a reformatory school ought to be regarded as a prison.

the Elementary Education Act, 1870, ss. 27, 28). Such a school is not part of the prison system, but part of the educational system of the country. Poor law schools are always rated. The position is different since the passing of the Local Government Act, 1888; before that Act, one and the same body of persons performed duties of two distinct kinds, which are now severed; the justices now administer justice in the name of the Crown, while the county council are concerned only with "administrative business," and have nothing to do with the service of the Crown.

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Lawson Walton, Q.C., in reply: The effect of the last arguments on behalf of the respondents is that all police stations, assize courts, and other county buildings which have always been held exempt, are now rateable by reason of the transfer to the county council. The object with which industrial schools are founded is to carry out the duties of the Government in the prevention of crime.

DAY, J.: The question raised in this case is whether an industrial school vested in the county council of Durham is rateable. The history of the school is shortly this: it was established by justices, and duly certified by the Home Secretary; it was carried on by the justices until the passing of the Local Government Act, 1888, when the building and the control of it were transferred to the county council. The question is, whether the county council are rateable in respect of this school. *Primâ facie*, all property of which a beneficial occupation is possible, is rateable. The Crown is not liable to any burdens unless it is expressly named in the Act of Parliament creating them. It is not named in the Acts relating to rates, and, therefore, is not rateable in respect of property which it occupies. Property occupied for public purposes by the principal officers of the Crown—for example, the post office occupied by the Postmaster-General—has been held to be exempt.

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There is another class of buildings which have been held to be exempt: viz., buildings occupied *quasi* by the Crown for public purposes, and by public officials, such as assize courts and county courts, in which justice is administered in the name of the Crown, and prisons. And it has been said that industrial schools come within this class. In my opinion an industrial school is not a prison, and it cannot seriously be contended that it is. It is said that it exists solely for the public benefit; but that is no ground for exemption. A great deal of property in the country is used solely for the public benefit, but it is still rateable. It is further said that this school was founded, and for some time controlled and managed by the magistrates, by means of public money. To my mind it does not matter whether it was founded with public or private money. All industrial schools are (I believe) indebted to public money to some extent for their maintenance, if not for their establishment. It has already been decided that industrial schools supported by private subscriptions are rateable. And there is no distinction with regard to questions as to rateability between schools paid for by private persons, with private money, and schools founded with public money and controlled by magistrates.

This school, therefore, cannot be brought within any of the recognized exemptions. It is said, however, that certain passages to be found in judgments dealing with private schools do not apply to the circumstances of this school, and therefore that it is exempt. But judges are not bound to travel beyond the facts of the particular case before them; the grounds of the decision may have been good enough for that case, and it is not always necessary or convenient to go through all possible circumstances; because, in previous decisions, schools were held rateable on the ground that they were founded by private persons with private money, it does not follow that, therefore, schools founded by public bodies with private money would be not rateable.

I give no opinion upon the question whether this school was rateable in the hands of the justices. The school is now in the hands of the county council; and there is no ground whatever for saying that the county council are the servants of the Crown; nor, in my opinion, for saying that the justices were, as managers of this industrial school, servants of the Crown. They acted as managers, not because they were servants of the Crown, but because they were the persons named in the Acts of Parliament. Courts and other buildings which are used by justices when discharging their judicial duties as justices of the peace are in a very different category. With regard to some purposes no doubt the justices may be considered the servants of the Crown. But I see no reason for holding this school exempt while it is in the hands of the county council.

A further point was argued, viz., that this school has been "struck with sterility." In my opinion it cannot be said to be struck with sterility. The county council can give it up if they think it useless; and, if given up, it could be sold. I can conceive a hypothetical tenant of this school. It may be that the existence of the school, as such, depends upon the licence of the Home Secretary. If the licence were withdrawn, the county council must use the school as best they could. I see no reason why a hypothetical tenant of this school should not be invented for the purpose of ascertaining the rent which he would be willing to pay for the occupation of it.

LAWRANCE, J.: I am of the same opinion. This case is like the case of the reformatory school, and but for the fact that it was founded by justices, this school would have been in the same position as the reformatory school. This school does not come within any of the exemptions which have been referred to. It is not the property of the Crown, nor is it occupied by the Crown; and, whatever may have been the position of the justices, the school is not now occupied by the servants of the Crown. And if it were

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1890. DURHAM COUNTY COUNCIL v. CHESTER-LE- STREET. Lawrance, J.	necessary to decide whether the magistrates, when they were in occupation, were rateable, I should not hesitate to say that they were; for, in my opinion, the mere accident that this school was under the management of justices and not of private persons is immaterial. As to the argument that the justices could not let this school, I think they had power to sell it; and I can see no distinction between being able to sell and being able to let it. The questions asked us must be answered in the affirmative.
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Judgment for respondents.



C. A. 1891. February 2.	R. v. ASSESSMENT COMMITTEE OF ST. MARY ABBOTTS. <i>Practice—Objection before Assessment Committee—Appearance by an Agent—Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 19.</i>
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A ratepayer who has given notice of an objection to a valuation list, is not bound to appear in person before the assessment committee in support of such objection, but may appear by an agent.

A RULE *nisi* had been obtained on behalf of Mr. Preston, a ratepayer in the parish of St. Mary Abbots, for a mandamus commanding the assessment committee to hear and determine an objection to a valuation list by Mr. Preston, and to hear his agent and witnesses.

Mr. Preston had not appeared personally in support of his objection, but had instructed Mr. H. Fuller, who was a surveyor, to appear on his behalf before the assessment committee. Mr. Fuller appeared and claimed to argue and to give evidence on behalf of Mr. Preston, but the assessment committee refused to hear him, on the ground that their practice was to hear only the objector in person, a member of his family or household, or a solicitor or counsel. In an affidavit made by the vestry clerk it was

stated that it was inconvenient that the same person should be both advocate and witness.

The Queen's Bench Division (Pollock, B., and Charles, J.), made the rule absolute for a mandamus: see [1891] 1 Q. B. 379.

The assessment committee appealed to the Court of Appeal.

J. V. Austin (Henn Collins, Q.C., with him), for the assessment committee: Under s. 19 of the Union Assessment Committee Act, 1862, the assessment committee must hold meetings, and may "at any such meetings hear and determine objections [to a valuation list], or may from time to time adjourn any such meetings, and adjourn or postpone the hearing or further hearing and determination of any such objections, and may, where they think fit, direct notice of any such objections to be given by the overseers, or by the persons objecting to third parties, before the further hearing thereof; but the committee shall not be required to hold a meeting for hearing objections . . . unless notice in writing . . . has been given to the committee; and where a meeting is holden for hearing objections, the committee shall not hear any objection . . . unless notice of such objection have been given to the committee and to the overseers; and where the ground of such objection is unfairness or incorrectness in the valuation of any hereditament of any person other than the person objecting, or the omission of such hereditament, also to such other person by the person objecting, except where the overseers by themselves or any other person on their behalf, and in the case aforesaid such other person as aforesaid, by himself or any other person on his behalf, consent to the hearing of such objection." The power given by this section to the overseers and to other persons to appear by an agent in certain specified circumstances impliedly negatives the right to appear by an agent in other cases. The section confers upon the committee

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judicial or quasi-judicial functions; and the committee is in a sense a Court. In ss. 19 and 32 of the Valuation (Metropolis) Act, 1869, an appeal to special sessions and quarter sessions respectively is given to a person "aggrieved by any *decision* of the assessment committee." The committee must therefore have the power to make reasonable rules for regulating its own proceedings. In *R. v. Williamson* [1890], 59 L. J. Q. B. 493, it was held that the chief gas examiner of the metropolitan district has a discretion as to whether he will or will not hear counsel upon an appeal to him under the Gas Companies Act, 1880, s. 12. [Lord ESHER, M.R.: I doubt whether I agree with that decision: I have a strong opinion at present that it was wrong.] [FRY, L.J.: In that case it was held that an officer of the company, a skilled person, was the right person to appear; if so, it shows that a surveyor would be the most suitable person to appear before an assessment committee.] In *R. v. Macqueen* [1861], 9 C. B. N. S. 793, it was held that it was competent to arbitrators under the Friendly Societies Act to decline to hear counsel. [Lord ESHER, M.R.: To decline to hear counsel, but not to decline to hear an agent.]

Philbrick, Q.C., and *Alex. Glen* for the respondents were not heard.

Lord ESHER, M.R.: It has been argued that the assessment committee are a Court or tribunal, and that they exercise judicial functions. They are, in fact, a number of vestrymen who are appointed by statute to hear objections to a valuation list, and to decide upon such objections. I do not think they can be called a Court or a tribunal exercising judicial functions. The question before us is, whether they have a right to say that an objector may not appoint any agent he chooses to appear in support of his objection to the valuation list. In my opinion there is nothing in law authorizing them to limit the common law right of

objectors to act through an agent. The committee have no discretion to decide whether they will hear an agent or not. It has been argued that it is inconvenient to hear an agent if he is also a witness; we are not called upon to decide that point. But I cannot see how the committee have a greater right to refuse to hear persons as witnesses than they have to refuse to hear persons as agents. The appeal must be dismissed.

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BOWEN, L.J.: I am of the same opinion.

FRY, L.J.: I agree. The assessment committee have no power to limit the common law right of persons entitled to make objections to the valuation list, to appear in support of that objection by an agent.

Appeal dismissed.



R. v. GUARDIANS OF WOOLWICH UNION.

Q. B. D.

Alteration of Totals in Valuation List—Appeals against Individual Assessments—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 32, 34, 41, 44.

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After the valuation lists for the several parishes in the Woolwich Union had been finally approved by the assessment committee, several appeals to quarter sessions were entered against the assessments of individual hereditaments comprised in such lists. The sessions reduced some of those assessments, and the chairman duly placed his initials against the alteration thereof, but refused to make any corresponding alterations of the totals stated in such list.

Held, by the Queen's Bench Division, that on an appeal against the assessment of an individual hereditament, the sessions had no power to make any alteration in the totals, which could be altered only on an appeal against totals, and, until so altered, were not affected by alterations of individual assessments.

RULE *nisi* calling upon the Guardians of the Woolwich Union to show cause why a writ of mandamus should not

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issue commanding them out of moneys in their hands applied by law to that purpose, to pay or to raise in manner provided by law, and pay to the treasurer of the County of London appointed to receive the same, the sum of 5,889*l.* 13*s.* 8*d.*, being the moneys appointed and required to be paid on or before June 12, 1891, by a certain precept issued and sealed as on May 15, 1891, and addressed to the said guardians, in accordance with the requirements contained in the said precept.

Some of the hereditaments comprised in the quinquennial valuation lists made in 1890 for the parishes in the Woolwich Union had been the subject of appeals to the London Quarter Sessions. Most of these appeals had been determined before the issue of the precept by the London County Council; in several appeals the sessions had reduced the separate valuations of the hereditaments, the subject of the appeals, and the chairman had duly placed his initials against the several alterations of the separate assessments under s. 34 of the Valuation (Metropolis) Act, 1869, but had made no corresponding alteration of the totals appearing in the valuation lists.

No appeal against the totals in the valuation lists for any of the parishes in the Woolwich Union had been entered.

An *ex parte* application was made to the London Quarter Sessions, on behalf of the guardians, that the chairman should place his initials against the corresponding alteration of the totals, but the chairman had refused to do so (*vide supra*, p. 95).

The clerk of the assessment committee of the Woolwich Union had also given to the clerk of the London County Council notice (purporting to be notice under s. 41 of the Valuation (Metropolis) Act, 1869) of the alterations made by the sessions in the separate assessments, and had called upon him to make the corresponding alterations in the totals.

The London County Council refused to recognize the validity of any alteration in the totals unless it were made

and initialled by the chairman of the London Quarter Sessions, in manner directed by s. 34 of the Valuation (Metropolis) Act, 1869, on an appeal against totals; and they contended that the totals as fixed by the assessment committee under s. 14 of the same Act must be the basis of the precept issued by them, notwithstanding the alterations of the separate assessments.

One appeal against an individual assessment in the quinquennial valuation list for one of the parishes in the Woolwich Union was at the date of the precept, and of these proceedings, still pending; see *London County Council v. Woolwich Union*, *supra*, p. 126.

Bosanquet, Q.C. (*Cutter* with him), showed cause:—Before the passing of the Valuation (Metropolis) Act, 1869, a separate valuation of each parish as a whole, independently of the poor rate valuation, was made by the justices in quarter sessions for the purpose of the county rate (*a*). Under the Valuation (Metropolis) Act, 1869, s. 14, the valuation of the whole parish is made the sum of the items. More than half of the local rates are levied by central bodies, such as the London County Council, and are calculated upon the totals; it is, therefore, important that they should be correct. Under s. 34, in an appeal against an individual assessment, the sessions may “alter the valuation list so far as it is questioned by the appeal.” In such an appeal the valuation list is questioned as to one item only, and therefore the sessions have, *in such an appeal*, no power to alter the totals. But by s. 41, “notice of every alteration in the total . . . which alteration is made *in consequence of* any decision on any appeal to the sessions,” shall be sent by the clerk of the assessment committee to the clerk of the London County Council. An arithmetical alteration in the totals, resulting from an alteration of the items, is such an alteration as is referred to in that section. [WILLS, J.: I should have thought

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(a) See 15 & 16 Vict. c. 81, ss. 2—16; 29 & 30 Vict. c. 78, s. 1.

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that an arithmetical alteration was within s. 41, but then s. 34 applies, and no one but the chairman at sessions can make the alteration.] The alteration of the totals is merely arithmetical; s. 34 applies to alterations requiring judicial decision. In s. 20, which relates to appeals to special sessions, it is expressly provided that the alteration of the assessment of an individual hereditament "shall not of itself in any way alter the totals . . . but may form a reason for an appeal against totals." There is no such provision in the sections relating to appeals to quarter sessions. It is implied, therefore, that an alteration of the items at quarter sessions may *of itself* involve an alteration of the totals. The result of the appeal now pending (*London County Council v. Woolwich Union, supra*, p. 126) may be to reduce the rateable value of the parish of Woolwich by more than 20,000%. Moreover, an appeal against totals, on the ground of alterations on appeals against individual assessments is impossible; for the overseers and the assessment committee cannot appeal on the ground that the totals, which they themselves have fixed, will be reduced because they are wrong; and notice of appeal against totals must be given before January 14th: see s. 42 (12); and the notice of appeal against an individual assessment need not be given before the same date. [WILLS, J.: Might not the parish authorities give a notice of appeal, *ex majori cautela*?] That is impossible, because the notice of appeal must specify the correction which the appellant desires to have made in the valuation list: see s. 33. It cannot have been the intention of the Act that the assessment committee, who have fixed the total, should appeal against that total, unless something has occurred to alter it. [He also cited *Fulham Union v. St. Mary Abbots*, Ryde's Rat. App. (1886-90) 86; 17 Q. B. D. 394.]

F. M. White, Q.C., and *H. E. Ivory* were not called upon to support the rule.

DENMAN, J. : I am not surprised that difficulties should have arisen as to the extent to which the valuation list is, as between several parishes or unions, conclusive or not. Our attention has been called to all the sections which are material to the question before us, and I am of opinion that the contention of the county council is right, and that there is no power to treat the valuation list, as between the several parishes, as otherwise than conclusive. The precept which the county council seek to enforce, is a precept requiring payment of the proportion of the assessment made upon the respondents in accordance with the valuation list. The parties objecting say that, because alterations of some individual assessments have been made, this, as a mere matter of arithmetic, causes an alteration of the total. The alteration required is to deduct 125*l.* from the 227,000*l.*, which is the total stated in the list. The county council answers that it is not competent to the respondents to say that the valuation list is incorrect. In my opinion the intention of the Act was that the valuation list, unless altered in the specific way prescribed, which has not been done here, should be conclusive. The reasons given by the county council in their letter to the respondents are correct; they say, "there can be no doubt that the chairman has no power or duty to alter totals except upon an appeal against totals. The chairman has already decided (*supra*, p. 95) that he cannot alter and initial totals which are merely altered to correspond with the new arithmetical total arrived at after alteration of individual assessments." In my opinion the scheme of the Act was that the totals should remain as stated in the valuation list, and that there is no power to alter them, unless certain things have been done which have not been done in this case. The provisions of s. 44 show that this was the intention of the legislature, because if there has been any over-payment, it provides a mode of re-payment or allowance, after an appeal has been heard, and an assessment has been reduced. But there is nothing in the Act showing that

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1891. R. <i>v.</i> GUARDIANS OF WOOLWICH UNION. Denman, J.	the valuation list should, as between several unions and parishes, be regarded as otherwise than conclusive. There is a strong indication of the intention of the legislature in s. 47, which provides that no alteration of individual assessments under that section shall "affect the value on which any rate is made, which is made on the totals of the gross or rateable value."
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I am of opinion that this precept must be enforced.

WILLS, J.: I am of the same opinion. When the various sections of the Act are considered, the scheme of the Valuation (Metropolis) Act, 1869, becomes a clear and reasonable one. When the overseers of the several parishes have presented their lists to the assessment committee, and the assessment committee have revised the lists, then the gross and rateable values of the individual hereditaments in each parish are to be added up and the totals are to be ascertained. When once these totals have been ascertained, then that which has hitherto been a mere arithmetical result assumes a new form and is incapable of alteration, except in the way pointed out by the Act, viz., an appeal against totals. The Act provides two schemes for appealing—appeals by individuals against individual assessments, and appeals by parishes or unions against the totals. If it be shown on an appeal against totals that the totals are wrong, then they can be altered; and this is the only way in which they can be altered. After the total has been once ascertained, it ceases to be the sum of the details if it is altered on an appeal against totals. An appeal is given to individuals against individual assessments, and to parishes against the totals of parishes. The only provision for an alteration in the list is, that it must be made by the chairman of Quarter Sessions; and, in my opinion, the chairman has taken the right view (*supra*, p. 95) in refusing, upon appeals against individual assessments, to make the resulting alterations in the totals. The totals, when once ascertained, become a new point of departure; they are not necessarily

the arithmetical exponent of the sum of the individual assessments. And it would be extremely inconvenient if every alteration of an individual assessment involved an alteration of the total. It is true that the result may not be mathematical correctness as to the assessment of the various parishes among themselves. But such a perfection is unattainable and impracticable, and rating is a practical thing. Moreover, the alterations in several lists will pretty much correct one another, and probably the valuation lists of all the parishes will be reduced in the same proportion. Practically, therefore, the same result will be arrived at as that now claimed on behalf of the respondents. I see no reason of justice or convenience for departing from the plain provisions of the Act, that, when once the list is made out, the chairman of Quarter Sessions alone can alter it, and he only in those respects in which it is questioned by the appeal. And I think it is clear that an appeal against individual assessments cannot affect the totals. I think our decision in this case is supported by *Fulham Union v. St. Mary Abbots*, Ryde's Rat. App. (1886-90) 86; 17 Q. B. D. 394. In that case there was an appeal by one parish against the totals of another parish, on the ground that several individual hereditaments had been under-valued; and it was held that the alteration of the totals could not affect the individual assessments. The result was that the totals were altered, but there was no process by which to effect the converse of the arithmetical operation which, it is said, ought to be done in this case. In that case, therefore, the totals *must* have failed to be equivalent to the sum of the individual assessments. Here, where the individual assessments have been corrected, there is no more reason for making a corresponding alteration in the totals than there was in that case for making an alteration of the individual assessments, after making an alteration in the totals. That case, therefore, though not exactly in point, throws considerable light upon the subject. This mandamus must go.

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Rule absolute.

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CHAPPELL *v.* OVERSEERS OF ST. BOTOLPH.

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October 29.

Advertising Stations—Hoardings on Public Street—Occupier—Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), ss. 3, 4, 5.

For the purpose of erecting new buildings on land vested in the Postmaster-General, the Commissioners of Sewers gave a licence for the erection of a hoarding standing on the public streets. A builder contracted to erect the buildings; by the terms of his contract he was bound, during the continuance of the work, to maintain the existing hoarding, which was (when no longer needed) to be removed and become his property; and he had power to use the hoarding for advertising purposes. The builder let the use of the hoarding for advertising purposes to advertising contractors.

Held, that the hoarding was erected on land “not otherwise occupied” within the meaning of s. 3 of the Advertising Stations (Rating) Act, 1889, that the builder was the person who had permitted the land to be “used for the exhibition of advertisements” within the same section, and that he was, therefore, to be deemed to be in beneficial occupation of such land, and was rateable in respect thereof.

CASE stated by two justices of the city of London under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49, upon an application made by the respondents to insert the name of the appellant under s. 72 of the Valuation (Metropolis) Act, 1869 (*a*), in a poor rate in respect of certain advertising stations.

The following facts appeared in the case:—

The hoardings or advertising stations (in respect of which it was sought to rate the appellant), with the gantries supporting them, stood entirely in the public streets, which were repairable by the inhabitants at large, and were vested in the Commissioners of Sewers for the City of London. The hoardings, &c., were erected in front of the site of certain buildings, vested in the Postmaster-General (which were

(*a*) By s. 72, “Whenever the name of any person liable to be rated . . . is omitted from any rate . . . the overseers may, after giving notice, &c. apply to any two justices, who may hear the case in like manner as in the case of summary proceedings, and insert the name so omitted . . . and every such insertion shall operate as if it had been part of the original rate.”

to be pulled down), for the erection of new buildings as an extension of the General Post Office; the hoardings were erected for the purposes of the new buildings, and for the protection of the traffic in the streets. The posts of the gantries supporting the hoardings stood on planks, and were fixed thereto by iron dogs and dowels. The planks rested upon the surface of the paving and public footway; and no portion of the structure was embedded in the soil or fixed to the paving or public footway, but was kept in position by its own weight.

The hoardings in question were not erected by the appellant, but, after their erection, the appellant, who was a builder, on September 11th, 1890, entered into a contract with the Commissioners of Works and Public Buildings for the erection of the new buildings on the Post Office land. The contract contained the following provisions:—

“The builder [*i.e.*, the appellant] shall maintain the existing hoarding, alter and otherwise deal with the same as may be necessary from time to time for the convenience of the works or the protection of the public. . . . When no longer needed the hoarding is to become the property of the builder. The hoarding may be used for advertising purposes to a height not exceeding 12 feet, and the advertisements must not be of a pictorial character, and must be subject to the control of the architect. From the commencement to the completion of every part of the work the same and all materials and things upon the site shall be the property of the Commissioners [of Works].”

The appellant, on August 21st, 1890, paid to the Chamberlain of London the sum of 10*l.*, and the Commissioners of Sewers then issued their licence to the Commissioners of Works for the erection of the hoardings. No other licence had been issued in respect of the hoardings, and no conditions had been made as to their use for advertisements under s. 5 of the Advertising Stations (Rating) Act, 1889.

By an agreement dated September 11th, 1890, the

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appellant let to W. Hill & Co., advertising contractors, the use of the said hoardings for affixing posters and other advertisements thereto, subject to certain conditions, for the sum of 60% per month for the period that such hoardings should remain in position."

The Postmaster-General had not been rated in the ordinary way in respect of the Post-Office land, but had always paid to the overseers a contribution in lieu of rates.

The respondents contended (a) that the hoardings in question were on land not otherwise occupied within the meaning of s. 3 of the Advertising Stations (Rating) Act, 1889; (b) that the appellant was the person permitting them to be used for the exhibition of advertisements; (c) that therefore he was liable to be rated under that section.

The appellant contended (a) that advertising hoardings were not made rateable under the said Advertising Stations (Rating) Act, 1889, but the lands whereon the same are erected; (b) that the word "land" in s. 3 of the said Act did not include a street; (c) that if the word land in s. 3 of the said Act were held to include the street, the land whereon the said hoardings were erected was otherwise occupied within the meaning of s. 3 of the said last-named Act than merely for the exhibition of advertisements or for the erection of such hoardings or other structures used for the exhibition of advertisements; (d) that the portions of the street adjoining the post-office land on which the said hoardings were erected in law was part of the post-office land of which the said appellant was not the rateable occupier; (e) that the appellant was not the owner of the post-office land or the person permitting such land to be used for the exhibition of advertisements or for the erection of the said hoardings within the meaning of s. 3 of the said Act.

The justices over-ruled the appellant's contentions, holding that the streets on which the hoardings and supports were erected were "lands not otherwise occupied"

within the meaning of s. 3 of the Act, and ordered the name of the appellant to be inserted in the rate.

The question for the opinion of the Court was whether, on the facts stated, the appellant's name was rightly inserted in the rate.

The Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), enacts as follows:—

Sect. 3. Where any land is used temporarily or permanently for the exhibition of advertisements, or for the erecting of any hoarding, frame, post, wall, or structure, used for the exhibition of advertisements, but not otherwise occupied, the person who shall permit the same to be so used, or (if he cannot be ascertained) the owner thereof, shall be deemed to be in beneficial occupation of such land or part thereof, and shall be rateable in respect thereof to the relief of the poor and to all local rates, according to the value of such use as aforesaid.

Sect. 4. Where any land or hereditament occupied for other purposes, and rateable in respect thereof to the relief of the poor and local rates, is used temporarily or permanently for the exhibition of advertisements, or for the erection thereon, or attachment thereto, of any hoarding, frame, post, wall, or structure, used for the exhibition of advertisements, the gross and rateable value of such land or hereditament shall be so estimated as to include the increased value from such use as aforesaid.

Sect. 5. Where, under any power vested in them by any local or general Act, any corporation, board, vestry, urban, sanitary, or other authority, shall grant a licence for the temporary erection of any hoard, gantry, scaffold, or other structure, upon or over any part of any public highway . . . such corporation, board, vestry, sanitary or other authority, may include in such licence a condition or conditions prohibiting the affixing of any advertisement to any such hoard, gantry, scaffold, or other structure, or sanctioning the affixing of advertisements thereto, upon payment of such sum and on such conditions as the

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corporation, board, vestry, sanitary, or other authority granting the licence, may determine.

Philbrick, Q.C. (Alex. Glen with him), for the appellant: The word "land" in s. 3 of the Act of 1889 must be read as meaning land capable of beneficial occupation, and in respect of which a person could be rateable. The hoardings here stand on the public streets, which are incapable of beneficial occupation. It may be admitted that the streets are not occupied: but even if the streets are "land not otherwise occupied" within s. 3, the wrong person has been rated. Assuming that the appellant may be said to permit the *hoarding* to be used for advertisements, he is not liable, for the liability under s. 3 is upon the person who permits the *land* to be so used, *i.e.*, in this case upon the Postmaster-General, who cannot be rated, because the Crown, not being named in the statute, is not bound by it. [MATHEW, J.: The man who permits the hoarding to be used for advertisements, permits the land which upholds the hoarding to be so used. And even if the Postmaster-General may be said to permit the user in one sense, that does not prevent the appellant from being the person who permits the user, within the meaning of s. 3.] The soil of the street adjoining the Post Office land is vested in the Postmaster-General, subject to the right of the public to pass over the surface. If the Postmaster-General is not rateable, then the liability rests on the Commissioners of Sewers who gave the licence to erect the hoarding. Without their leave, the user of the street for this purpose would be unlawful, and therefore they are the persons who permit the user. [He also cited *Willing v. Assessment Committee of St. Pancras* [1877], Met. Rat. App. 188; 2 Q. B. D. 581; *Smith v. Lambeth Assessment Committee* [1882], 10 Q. B. D. 327.]

Jelf, Q.C., and Fillan, for the respondents, were not called upon.

MATHEW, J. : The decision of the magistrates was right. I have failed to see the difficulties suggested, and the language of the section appears to me to be perfectly plain. The Act deals with two descriptions of property ; (1) land already occupied for other purposes, and rated in respect thereof: and (2) land "not otherwise occupied." These are dealt with in s. 4 and s. 3 respectively. Therefore s. 3 may be read in this way—"where any land is used for advertisements, and is not otherwise occupied, the person who shall permit the same to be so used;" not, as Mr. Philbrick suggests, the person who puts the hoarding there, but "the person who permits the same to be so used shall be deemed to be in beneficial occupation of such land, and shall be rated in respect of it," the object of the section clearly being to create a beneficial occupier for the purposes of the Act, and to make that rateable which was not rateable before.

The position of the appellant here is perfectly clear: he has this hoarding and the land on which it stands, and that land is land "not otherwise occupied;" and he permits the hoarding to be used for the purposes of advertisement, that is, he lets the spaces to different advertisers, and under the terms of the Act it seems to me clear that he is to be deemed to be in beneficial occupation and rateable accordingly.

But it has been argued that we ought to look at the appellant's title, and see whether we cannot make the Postmaster-General, or the Commissioners of Sewers, the persons rateable under this section; and our attention has been called to the circumstances under which the appellant acquired the right to use these hoardings. The hoardings were erected before the appellant was permitted to use them; a contract was entered into between him and the Postmaster-General, for and on behalf of her Majesty, that the hoarding should be continued during the construction of certain buildings for which the appellant has contracted. At the end of the time the hoarding must be

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removed, and the materials are to be the property of the appellant. There was also a contract that he might let out any of the spaces on the hoarding for advertising purposes if he thought fit to do so. It appears, further, that it would have been impossible to have put this hoarding in the street without the permission of the Commissioners of Sewers, and for this reason we have been asked to cast the burden of this section either on them or on the Postmaster-General. It seems to me quite absurd to say that the Commissioners can in any sense be regarded as permitting this land to be used for the purpose of advertisements. They have given their licence for the hoarding to be put on the street, and have nothing further to do with it. That the Postmaster-General, acting in his corporate capacity as representative of the Crown, would not be assessable, is quite clear; nor does he come within the description, used in s. 3, of the person who permits land to be used for the exhibition of advertisements. The appellant is the person who actually permits these hoardings to be used; he had the authority of the Postmaster-General so to use them if he thought fit, and having that authority he permitted them to be so used, and therefore he clearly comes within the words of the section.

A. L. SMITH, J.: I think the justices have arrived at a right conclusion. I will state my view, as I understand this is the first case that has come up for decision under this Act. The preamble of the Act says: "Whereas difficulties have arisen in relation to the assessment to poor and other rates of land used for exhibition of advertisements, and it is expedient to remove the same." That preamble is only narrating what is common knowledge in the Law Courts. In dealing with the difficulties, ss. 3 and 4 apply to two different classes of land used for the purpose of advertisements; s. 3 deals with the case of land not occupied, and therefore not rateable, upon which hoardings have been erected; and s. 4 deals

with the case of land occupied, and therefore rateable. That being the salient difference between the two sections, then the legislature have enacted upon whom the rate is to fall in the respective cases. In s. 3, the person permitting the unoccupied—the non-rateable—land to be used for advertisements, shall be deemed to be the beneficial occupier so as to make him rateable. In the other case, under s. 4, where there is already a beneficial occupier of land, which is consequently rateable, then that man's liability is to remain as before, but where in addition a hoarding is put up, the gross and rateable value are to be increased so as to include the enhanced value arising from such use of the land.

It has been argued that this land, where the hoardings are erected, was part of the street; if so, it was unoccupied, and consequently not rateable, and so comes within s. 3.

If it is within s. 3, who is the person rateable? In my judgment the person who permitted the user of the land for the purpose of advertising is the person who has let the land with the hoardings for the purpose of advertisements, and that is the appellant. He is therefore rateable (a).

Appeal dismissed.

EDWARDS v. ST. OLAVE'S UNION.

Q. B. D

Tithes, or Payments in lieu of Tithes—Rateability.

1891.
June 15.

The provision for the support of the rector of St. Olave's Southwark, before the year 1817, had been from time immemorial certain ancient pecuniary payments or sums of money payable by the occupiers of houses and owners of estates. By 57 Geo. 3, c. vii., passed in 1817, which recites that the said provision for the rector was insufficient, the annual sum of 600*l.* was directed to be paid to the rector by trustees, out of rates to be levied for the

(a) It does not seem to have been suggested that Messrs. Hill & Co., the advertising contractors, ought to have been rated instead of the appellant.

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purpose, and was to be "paid, taken, and received, in lieu and in full recompense and satisfaction of and for all tithes, and compositions or payments for tithes, and Easter offerings."

There was evidence that before and after the passing of the Act of 1817 the rector had in fact been rated in respect of the payments made to him.

Held, that the rector was not rateable in respect of the payment of 600*l.* per annum made to him under the Act.

Held, also, that the rateability of the payments made under the Act must depend upon the true construction of the Act creating the payments, and not upon the question whether those payments had or had not been in fact rated.

SPECIAL case stated by consent and by order of a judge under s. 40 of the Valuation (Metropolis) Act, 1869.

The following are the facts stated in the case, so far as is material to this report :—

1. The parish and rectory of St. Olave, Southwark, in the county of London, are an ancient parish and rectory, and the provision for the support of the rector for the time being was, until the passing of 57 Geo. 3, c. vii., and from time immemorial had been, certain ancient pecuniary payments or sums of money payable by the occupiers of houses and owners of estates in the parish. In 1762 a bill was filed in the Court of Exchequer by Hughes, the then rector, to enforce payment by the defendant Dame Humble, the owner of an estate in the said parish, of certain of these customary payments. [Copies of the decrees in the action were set out in the appendix to the case; and it appeared therefrom that the defendant contended, and the plaintiff denied, that the occupiers of the houses on the estate were liable for the said payments, which were called "tyths" in the operative words of the decree. The Court gave judgment for the plaintiff.]

2. Such of the old poor-rate books of the parish as are in existence cover a period, with some gaps, which commences in the year 1709. [For several years from 1709 to 1729, the rector was assessed; but it does not appear whether in respect of his "tithes" or his house. For

several years from 1737 to 1760, the rector's house was entered in the books, but no assessment was made thereon.] In the subsequent part of the eighteenth century, the names of the successive rectors appear in the rate books; but they were not assessed at any amount. In the year 1719, the Rev. Dr. Boulter, the then rector, was rated on an assessment of 30*l.* in respect of a "scavengers' rate," the amount of the rate being sixpence in the pound. In 1740, another scavengers' rate was made, but the rector's name does not appear in the book. In the rate book for August 5, 1798, the rector is assessed "for his rectory, parsonage, house, and tithes," at "the yearly rent" of 200*l.* The same entry occurs in the rate books for 1799, 1808, 1810, 1812, 1814, and 1815. The rate books for the years 1800 to 1807, 1809, 1811, and 1813, have not been found.

3. The rate books for January, 1816, and January, 1817, contain the following assessment:—

Person Assessed.	Lands, Tenements, &c.					
	The Yearly Rent.			The Assessment.		
	£	s.	d.	£	s.	d.
The Rector - -	200	0	0	15	0	0

4. On March 17, 1817, the statute 57 Geo. 3, c. vii., received the royal assent.

The following are the sections which are material in the present case:—

Sect. 1. Whereas the parish of St. Olave is an ancient parish and rectory. . . . And whereas the provision for the support of the rector for the time being of the said parish is, and from time immemorial hath been, certain ancient pecuniary payments in money for and in lieu of tithes, the greater part of which consist of a certain sum paid for each house by the tenant or occupier thereof, and others of the

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said payments are divers sums in gross paid by divers owners of several entire estates within the said parish, together with Easter offerings, amounting in the whole to the annual sum of 230*l.* or thereabouts, and surplice fees which are of uncertain amount. And whereas the said provision is insufficient for the suitable support and maintenance of the said rector, and it is therefore expedient that better provision should be made for the support and maintenance of the said rector in lieu of all tithes, moduses, compositions for tithes, Easter offerings and oblations, and all other claims whatsoever (exclusive of surplice fees). . . . The rector and churchwardens and overseers of the poor of the said parish of St. Olave, Southwark, for the time being, and their successors to be appointed as hereinafter mentioned, shall be and they are hereby appointed trustees for carrying this Act into execution.

Sect. 8. For the purpose of making an adequate provision for the rector of the said parish for the time being, the annual sum of 600*l.* shall, from and immediately after the passing of this Act, be paid under the provisions of this Act to the rector and his successors by four equal quarterly payments, and such payments shall be made out of the rates to be assessed and raised as hereinafter mentioned, and shall be paid, taken, and received in lieu and in full recompense and satisfaction of and for all tithes and compositions or payments for tithes and Easter offerings, and for all obventions and oblations due or payable to such rector.

Sect. 27. It shall be lawful for the said trustees, and they are hereby authorized and required once in every year, or oftener if they shall think proper, by writing under their hands, from time to time to make an assessment or assessment rate or rates upon all and every person and persons who do or shall inhabit, hold, use, occupy, possess or enjoy any land, ground, messuage, house, shop, wharf, warehouse, vault, coach-house, stable, cellar, building, yard, garden, tenement or hereditament within the

said parish for any term or time not exceeding one year, upon each or any one such rate or assessment in any sum of money not exceeding ninepence in the pound by the year of or upon the annual rent or value of such lands, &c., at which the same respectively shall be assessed to the poor rate, and to order or direct the collector or collectors to be appointed in pursuance of this Act to demand, collect and receive from the occupiers of such lands, &c., such rates and sums of money as shall be so assessed or rated as aforesaid either by yearly or half-yearly payments, all which rates and assessments so to be made and collected are hereby vested in the said trustees and their successors, and the said rates and assessments shall commence upon or take place from such day or time as the said trustees shall direct or appoint, and such rates and sums of money shall be applied for the purposes of this Act (that is to say) in the first place in defraying the costs, &c. of obtaining this Act, and in the next place in payment of the several sums hereinbefore directed to be paid to the said rector for the time being and his successors, and of all incidental expenses attending the execution of this Act.

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Sect. 28. [All money assessed as aforesaid to be paid to the collector appointed under the Act, and by him to the trustees], and the said trustees are hereby required to pay thereout to the rector for the time being the said sum of 600*l.* in manner hereinbefore mentioned, and the surplus or remainder of the moneys so collected and paid shall be by the said trustees forthwith paid to the overseers of the poor of the said parish for the time being and applied in aid of the poor rates.

In this statute there is no provision exempting the rector from rates.

5. The first of the rates (hereinafter called the rector's rates) made under and in pursuance of this statute was made in April, 1817, and the rector's rates have been regularly made and levied ever since. The stipend of 600*l.* per annum has been regularly paid to the rector by

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the trustees out of the proceeds of the rate without any deductions, and the balance of the proceeds of the rate, after payment of the said stipend and expenses, have been handed over to the overseers in aid of the poor rate.

6. The trustees have never been rated in respect of the proceeds of the rector's rate.

7. In the poor rate book for July, 1817, the rector was assessed "for his stipend in lieu of tithes" at "the yearly rent" of 210*l.* The rector was similarly assessed for his stipend in lieu of tithes, in the year immediately following, the "yearly rent" being entered either at 210*l.* or 200*l.* until April, 1821, when it was reduced to 100*l.*, at which he was rated until January 3rd, 1822 (*a*). For some years after this date, though the "yearly rent" in respect of stipend in lieu of tithes was still entered at 100*l.*, the rector was not rated in respect thereof. From 1841 to 1844 (inclusive), the rector's name still appears in the poor rate book in respect of "his stipend in lieu of tithe," but no "yearly rent" or "assessment" appears therein. In the rate book of January 1st, 1845, the rector is rated in respect of "his stipend in lieu of tithes" at 600*l.* gross estimated rental and 400*l.* rateable value. [The same rating continued till 1875, and from 1875 until the appointment of the appellant, the figures were entered at 550*l.* gross and 367*l.* rateable value.]

8. In 1736, by 6 Geo. 2, c. 11, the parish of St. John, Horselydown, was taken out of the parish of St. Olave's, Southwark, and formed into a separate parish. By that Act a sum of 3,500*l.* was appropriated out of the coal duties towards the building of the church, the rectory house, laying out the churchyard, &c., and in addition a sum of 60*l.* per annum was directed to be paid by the churchwardens of St. John's unto the rector, "without any

(*a*) No explanation was given in argument of the assessment at 100*l.* a year in respect of a yearly stipend of 600*l.*, regularly paid. It is suggested that the overseers may have allowed a deduction in respect of a curate's salary: cf. *R. v. Goodchild* [1858], E. B. & E. 1; 27 L. J. M. C. 233.

deduction or abatement for or on account of any taxes or impositions by parliament or otherwise howsoever;" and it was further enacted that the provisions thereby made were "in lieu of all moduses, tithes, and Easter offerings, and other demands whatsoever except surplice fees, &c."

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9. In 1827, by 7 & 8 Geo. 4, c. 23, s. 2, further provision was made for the maintenance of the rector of St. John's, exempt from all taxes, rates, and assessments; and by s. 8, it was enacted that thereafter all tithes, and payments in lieu of tithes, &c., which the rector might otherwise have had by law should cease; and s. 9 provided that the different provision then made should be received and accepted in lieu of all tithes, compositions for tithes, or payments for tithes, &c., due to the rector.

10. The appellant was instituted into the rectory of St. Olave's on December 31st, 1890.

11. [In the supplemental list, made in May, 1891, the appellant was assessed in respect of "his stipend in lieu of tithes, rectory of St. Olave," at 120% gross and 100% rateable value.]

The appellant, on his objection before the assessment committee, and on the appeal, contended that the stipend was not rateable, and that the whole entry in the valuation list should be struck out. No question was raised as to the amount.

Channell, Q.C. (*A. B. Kempe* with him), for the appellant: Under 43 Eliz. c. 2, the parson is rateable in respect of his tithes, and where payments are made in lieu of such tithes they are themselves rateable. But in *Esdaile v. City of London Union*, Ryde's Rat. App. (1886-90) 105; 19 Q. B. D. 431, the Court of Appeal held that certain ancient payments, made in the city of London, though called "tithes," were not tithes, and were not rateable; and that, therefore, statutory payments substituted for them were not rateable. The payments made to the present appellant are of the same character. It is true

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that s. 51 of the Valuation (Metropolis) Act, 1869, provides that "the overseers shall not include in the valuation list any hereditaments (except tithes or payments in lieu of tithes) which are charged according to rule 2 in s. 60 of the Income Tax Act (5 & 6 Vict. c. 35), but shall include tithes and payments in lieu of tithes and every hereditament in their parish." This provision must be construed as applying only to rateable tithes. In *Esdaile's Case*, the so-called "tithes" had never been rated; in the present case they have been only occasionally rated. In *R. v. Christopherson* [1885], 16 Q. B. D. 7, the Court of Appeal held that a rate (similar to that now in question) payable to a rector under a local Act, not being in lieu of tithes, was not rateable. Questions as to the rateability of the vicar's rate in Coventry were raised in *R. v. Toms* [1780], 1 Dougl. 401; and *Rann v. Pickin* [1782], Cald. 196. In the present case the decree set out in the appendix to the special case decided that, as between Dame Elizabeth Humble and her tenants, she was liable for the "tithes." The mere fact that the payments are called "tithes" is immaterial. The burden of proof is on the respondents to show that these "tithes" are rateable. The usage, as shown by the rate-books, is not sufficient to prove that they were rated, still less that they were rateable. [WRIGHT, J.: The evidence of the rate-books can be considered up to 1817; the construction of 57 Geo. 3, c. vii., which created the present payments, is for the Court.] Assuming some person to be rateable, the trustees in whom the rate is vested, and not the appellant, are rateable. [He also cited *R. v. Great Hambleton* [1834], 1 A. & E. 145; *Eagle on Tithes* (ed. 1830), vol. 1, p. 420.]

W. Graham for the respondents: If the payment made to the rector is made in lieu of rateable tithes, it is admittedly rateable; if so, it can make no difference that the payment is made through the intervention of trustees. The trustees cannot be rateable, because they do not

receive the sum collected "in lieu of tithes." The question is not whether the tithe payer is discharged, but whether the parson is now receiving something in lieu of the tithes which he formerly received. Next, the tithes formerly paid were rateable. They were, in fact, rated in several years, including 1816 and 1817, immediately before the passing of 57 Geo. 3, c. vii. It is remarkable, if the payments were intended to be exempt, that no express clause was inserted in the Act to contradict the then existing practice. Moreover, a previous Act, 6 Geo. 2, c. 11 (affecting the parish of St. Olave's Southwark), contains the express exemption omitted from 57 Geo. 3, c. vii. It must be assumed that the omission was intentional.

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WRIGHT, J. : In my opinion it has not been made out that this annual payment of 600*l.*, or any part thereof, is rateable; nor is it shown that the sum received before the passing of the Act of 1817 (57 Geo. 3, c. vii.) was rateable. The evidence of actual rating is really confined to the period from 1798 to 1817, and in my opinion the evidence that the rector was rated during that period is insufficient. The only other evidence is the decree in the action of *Hughes v. Humble*, set out in the appendix. The bill of complaint, no doubt, speaks of the payments as "tithes," but it also shows that the plaintiff denied that they were tithes in the strict sense. The dispute in the case seems to have been whether the payments were tithes proper, payable by the occupier, or were payable by the owner. The Court held that they were of the latter kind; and it is obvious that, had they been tithes, the proceedings would have been wrong, tithes being recoverable by distress, and not by action against the owner of the land. The Act of 1817 speaks of the "ancient payments in money for and in lieu of tithes," and this is in fact the strongest evidence there is in support of the contention that they were rateable; but in my opinion it is not enough. The Act of 1817 makes the case against the rateability of the new

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payments much stronger. The Act makes a better and different provision for the rector, instead of, and not in exact substitution for, the old payments. The payments under the Act are entirely new payments, and are not subject to the same burdens as the old. It is true that the Act, in s. 8, says that the new payments shall be paid, taken, and received in lieu and in full recompense and satisfaction of and for all tithes, &c."; but this merely means that the rector should not in future be entitled to the old tithes as well as the new payments. I think our decision, that these payments are not rateable, is warranted by *Esdaile v. City of London Union*, Ryde's Rat. App. (1886-90) 105; 19 Q. B. D. 431.

COLLINS, J. : I am of the same opinion. It is admitted that, unless the original payments were "tithes" in the strict sense, the new payments are not rateable. The onus rests upon those who seek to impose the rate, and in my opinion it is not discharged. There is absolutely nothing in the rate books before 1798, and the evidence as to actual rating is limited to the period from 1798 to 1817: this evidence is not conclusive to show that all or any of the old payments were in fact rated. The decree in *Hughes v. Humble*, set out in the appendix to the case, carries the matter no further, because the parties evidently did not admit that the payments were strictly "tithes." They seem to me to have been much more like the payments described in *R. v. Toms* [1780], 1 Dougl. 401, and were probably voluntary payments by the parishioners. This being the inference up to 1817, the Act 57 Geo. 3, c. vii., shows what the parties at that time thought. The Act makes no such substitution for tithes as in *R. v. Boldero* [1825], 4 B. & C. 467; in that case an Inclosure Act extinguished the tithes, and enacted that in lieu of them the commissioners should award to the rector a certain annual rent equal in value to certain proportions of the rents of the lands in the parish. And it was held

that the rector was liable to be rated in respect of this annual rent, the Act not having expressly exempted it. Where a fixed sum is substituted for tithes which were themselves rated, it is easy to see why the sum so substituted should be put upon the same footing. But in the present case, the Act recites that the provision for the support of the rector had been certain ancient pecuniary payments, and that they were insufficient, and that it was expedient that better provision should be made. The sum of 600*l.* was not fixed, because that was the amount of the "tithes," but the scheme of the Act was to maintain the rector adequately, and not merely to quantify the sum to be received for tithes. Suppose the amount of the old tithes had been only 10*l.*, it could not be said that 600*l.* was in substitution for those tithes. In my opinion, there is no alternative between holding the whole or none of the 600*l.* to be in substitution for the old "tithes." The intention of the Act is to make a general provision to the rector outside tithes, and that the 600*l.* should be paid as a stipend, and not in substitution for tithes.

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Collins, J.

Appeal allowed.

PEARSON *v.* HOLBORN UNION ASSESSMENT COMMITTEE.

Q. B. D.

Exemption—Volunteer Corps—Occupation by Servants of the Crown for Crown Purposes—Storehouse—Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 26.

1893.

February 9.

Premises occupied by a volunteer corps for the purposes of the corps, and reasonably necessary for the service of the corps, are exempt from rates, as being occupied by the servants of the Crown for the purposes of the Crown.

Jones v. Mersey Docks (1865), 11 H. L. C. 443, followed.

By s. 26 of the Volunteer Act, 1863, a store-house for arms and ammunition of a volunteer corps is exempt from rates.

Held, that the exemption extended to the rooms reasonably necessary for the accommodation of three non-commissioned officers

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who were required by the military authorities to reside upon the premises for the safe keeping of the stores.

CASE stated by consent and by order of a judge, under s. 40 of the Valuation (Metropolis) Act, 1869 (*a*).

The questions raised by the case related to the rateability of certain premises in Leonard Street, used as a storehouse, drill hall, &c., by the 2nd Middlesex Artillery Volunteers. The appellants contended that the whole were exempt from rateability—

(a) as store-houses within s. 26 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65).

(b) as being in the occupation of the Crown for the purposes of the Crown.

The Volunteer Act, 1863, s. 26, enacts as follows:—

“The commanding officer of a volunteer corps or administrative regiment, receiving any arms, ammunition, or other stores supplied at the public expense, or by subscription, shall, subject to the approval of the lieutenant of the county to which the corps belongs, or in which the headquarters of the administrative regiment are situate (as the case may be), appoint a proper storehouse for the depositing and safe keeping of such arms, ammunition, or stores. Every such storehouse shall be free from all county, parochial or other local rates or assessments.”

The appellant was assessed in respect of so much of the premises as the respondents alleged were not occupied as a storehouse within the meaning of s. 26, at 336% gross and 280% rateable value.

The facts were found in the case as follows:—

4. The appellant is the commanding officer of the 2nd Middlesex Artillery Volunteers, and as such is the lessee of the premises, the subject-matter of this assessment, under a lease for twenty years at 400% a year. The 2nd Middlesex Artillery Volunteer Corps consists of 634

(*a*) The parties being unable to agree upon the facts, the case was stated in the form submitted to the Court by an arbitrator: *vide supra*, p. 152.

officers and men. It is one of the volunteer corps of the Eastern Division of the Royal Artillery, and for discipline and command is included in the Home District, being subject to the orders of the Major-General commanding such district.

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5. The premises in question have four floors, with a gunshed, and drill-hall at the back extending to the roof.

6. The primary purpose of the premises is that of a storehouse for the guns, arms, and ammunition of the corps. These comprise eight guns; viz. five 64-pounders, one 40-pounder, and two 12-pounders; also 530 stand of arms with corresponding ammunition, all the property of the Crown. There are also kept on the premises the uniforms of 350 men. The said premises have been duly certified as a storehouse by the authorities, pursuant to s. 26 of 26 & 27 Vict. c. 65. The premises also serve the purposes of a place of meeting for drill, military instruction, &c.

7. Three non-commissioned officers and their families reside permanently upon the premises. The guns, stores, ammunition, &c., are in the safe keeping, care and charge of such officers. The military authorities insist, as a condition to the supply of the guns, and the granting of the certificate aforesaid, upon the presence of three such non-commissioned officers. I find that the presence of the said officers is reasonably necessary for the purpose of such safe keeping, care, and charge.

8. It is admitted by the respondents that for the purpose of a storehouse within the meaning of s. 26, portions of the said premises are necessary and proper. I find as a fact that for the purposes of such storehouse the whole of the said premises, except the following, are necessary and proper: that is to say, except:

On the first floor, the officers' mess-room, the officers' ante-room, the canteen, the sergeants' room, the men's mess-room:

On the third floor, two rooms [each about 14ft. by 10ft.].

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The said excepted parts, though suitable and proper for the purposes of the corps, are not storehouses within the meaning of s. 26.

9. It has been agreed between the parties to this case that the value of the whole premises is 410*l.* gross, and 341*l.* 13*s.* 4*d.* rateable value. I find that the value of the portions of the said premises mentioned in paragraph 8, and which are not storehouses within the meaning of s. 26, is as follows: on the first floor 75*l.* 15*s.* gross, and 63*l.* 2*s.* 6*d.* rateable value: on the third floor, 4*l.* 13*s.* 1*d.* gross, and 3*l.* 7*s.* 7*d.* rateable.

10. The whole of the said premises are used solely for the purposes of the corps. The appellant, Lieutenant-Colonel Pearson, has no use or occupation of the premises other than as colonel commanding the said corps, and in discharge of his duties as such. With the exception of the three non-commissioned officers in paragraph 7 mentioned, the officers and men of the corps have no use or occupation of the premises other than in their capacity of artillery volunteers.

11. Of the three non-commissioned officers who reside permanently upon the said premises, two are upon the establishment of the regular army, and receive their pay through one of her Majesty's paymasters stationed at Hounslow. The third non-commissioned officer resident upon the premises is not now upon the establishment of the regular army, but is a volunteer, having retired from the army upon a pension.

12. The rent of the said premises is paid from the general fund of the corps, which fund is formed in part from the government grant (about 1,710*l.* per annum), in part by voluntary subscriptions (about 200*l.* per annum).

The questions for the opinion of the Court are :—

1. Whether the whole of the said premises are exempt from rates.

2. Whether the portions of the said premises necessary and proper for storehouses alone, are exempt from rates.

Poland, Q.C. (*E. Boyle* with him), for the Appellant: First, the whole of the premises are exempt under the Volunteer Act, 1863, s. 26; for those parts which are not strictly within the term "storehouse," are necessary for the proper use of the premises as a storehouse. Secondly, the whole of the premises are exempt, as being occupied by the servants of the Crown for the purposes of the Crown. The exemption conferred by the Volunteer Act, 1863, was unnecessary, because the premises were already exempt on the principle laid down in *Jones v. Mersey Docks* [1865], 11 H. L. C. 443. Blackburn, J., delivering the opinion of the majority of the judges, said (*Ib.*, at pp. 463, 464): "The Crown, not being named in the statute of Elizabeth, is not bound by it; and consequently, the overseers cannot impose a rate on the sovereign in respect of lands occupied by her Majesty, nor on those occupied by her servants for her Majesty. The exemption depends entirely on the occupier, and not on the title to the property. The tenants of Crown property paying rent for it are rateable like all other occupiers. . . . On the other hand, where a lease of private property is taken in the name of a subject, but the occupation is by the sovereign or her servants on her behalf, the occupation being that of her Majesty, no rate can be imposed: see *Lord Amherst v. Lord Somers* [1788], 2 T. R. 372; 1 R. R. 497. An officer residing on property which is exempt upon this principle, is entitled to reasonable accommodation for himself and his family, but is rateable for any excess above what is reasonably necessary: see *R. v. Stewart* [1857], 8 E. & B. 360; and *R. v. Fuller* [1855], 8 E. & B. 365, n. In *Coomber v. Berkshire JJ.* [1883], 9 App. Cas. 61, the exemption was held to extend to assize courts and a police station. In *R. v. Jay* [1857], 8 E. & B. 469, a building erected for the custody of arms and stores of militia, was held to be "employed for her Majesty's use and service," and, therefore, within the exemption created by s. 6 of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122). It is impossible to put

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volunteers and militia in different categories. It is an over-refinement to distinguish the rooms on the first and third floors, mentioned in paragraph 8 of the case, as being occupied differently from the rest of the building, which is one entire rateable hereditament. The finding that the appellant has no occupation other than as colonel of the corps disposes of the suggestion that he has any excess of accommodation beyond what is reasonably necessary. The expenses are paid almost entirely out of the government grant, which will be relieved, *pro tanto*, by an exemption from parochial rates. The rates, if paid, would be paid in part, at least, out of the funds of the Crown.

Bosanquet, Q.C. (*R. Cunningham Glen* with him), for the respondents: In *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, the decision was in favour of the rateability of the docks, and it was not necessary to lay down the exact limits of exemption, because the docks were clearly not within them. The position of the volunteers is different from that of the regular forces and the militia; the Mutiny Act extends to the permanent staff of the volunteers only "when they are on actual military service": see s. 23 of the Volunteer Act, 1863. [COLLINS, J.: Are not the militia subject to the Mutiny Act for a part only of the year?] The militia occupy property provided out of the public funds; the volunteers subscribe part of their funds, and the property is the property of the corps, vested in the commanding officer, and is distinguishable from the guns, which are the property of the Crown: see ss. 24, 25. The property is used for the purposes of the corps, not for the purposes of the Crown, and may be devoted to such purposes as the members of the corps determine. [COLLINS, J.: If the artillery at Woolwich give a ball in their mess-room, does that make it rateable?] No residence is required of the volunteers as is required in the case of militia. The property here is not the property of the Crown, and if it is capable of occupation for the private enjoyment of the

members of the corps, it is immaterial whether it is in fact so used. In *Gambier v. Overseers of Lydford* [1854], 3 E. & B. 346; 23 L. J. M. C. 69, it was held that a prison was not rateable, but that the coach-house and stable, occupied by the governor, but not necessary for the discharge of his duties, and a canteen, for the sale of beer to the prison officers, from which no profit was made, were rateable. A canteen may be let, and might be let in the present case; it is therefore rateable. In *R. v. Bradford* [1815], 4 M. & S. 317, a canteen was rated. It is not necessary to contend that mess-rooms in barracks are rateable. Soldiers are under orders, and have, in law, no individual occupation of their own, whereas volunteers are free agents. In *R. v. Terrott* [1803], 3 East, 506; 7 R. R. 502, a commanding officer, who had distinct apartments in barracks assigned to him, was held rateable, as having a beneficial enjoyment beyond his necessary accommodation as an officer for the purpose of public service. [COLLINS, J.: Must we not take that case as qualified by *R. v. Stewart* [1857], 8 E. & B. 360, to the extent that the station in life of the occupier may be taken into account?] In *R. v. Ponsonby* [1842], 3 Q. B. 14, the occupiers, by permission of the Crown, of apartments in Hampton Court were held rateable, and Williams, J. (at p. 30), speaks of *R. v. Terrott* as "a case never questioned." In *Martin v. West Derby Union* [1883], 11 Q. B. D. 145, the quarters of a police superintendent, a quarter of a mile from the police station, were held rateable; and the Court followed the rule laid down in *Gambier v. Overseers of Lydford* [1854], 3 E. & B. 346, viz., that residences within the prison precincts were not rateable, and residences outside were rateable. Coleridge, C.J., calls this (11 Q. B. D. at p. 151) a "plain and intelligible rule," but does not state the principle of the distinction. [COLLINS, J.: I cannot, myself, see the distinction; and Lord Campbell, in *Gambier v. Overseers of Lydford*, allows that it is a "subtle distinction."] In *R. v. Hurdiss* [1789], 3 T. R. 497; 1 R. R. 765, the master-

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gunner was held rateable in respect of the battery-house at Seaford, on the ground that the sessions had found that he was the occupier; and Lord Kenyon said: "Soldiers, indeed, cannot be said to be the occupiers of their barracks, in the legal signification of the word; they are no more than mere servants."

Poland, Q.C., in reply: The occupation is the occupation of the appellant, and in his official capacity. The members of the corps may use the premises, but they are not the occupiers. Exemption depends upon the question, who is the occupier? In *Gambier v. Overseers of Lydford* [1854], 3 E. & B. at p. 351, it was expressly found that the canteen was "*occupied* by one Samuel Piper"; he was therefore rateable. In *R. v. Bradford* [1815], 4 M. & S. 317, the canteen was demised to a tenant who paid a large rent for it. In *Martin v. West Derby Union* [1883], 11 Q. B. D. 145, the appellant provided the furniture for the house rated, and so occupied it by himself and by his furniture.

LAWRANCE, J.: The question we have to decide is whether parts of certain premises are rateable or not. It appears that by far the greater part is used for a storehouse provided under s. 26 of the Volunteer Act, 1863: for the arbitrator has found that the rateable value of the whole is 341*l.*, while the value of the excepted portion is only 66*l.* Therefore by far the greater part is comprised in the storehouse, as to which there is no dispute. The excepted portions consist of the officers' mess-room, and ante-room, the canteen, the sergeants' room, the men's mess-room, and two small rooms on the third floor. As to these, the question depends on what is the real position occupied by the volunteers. Are they the servants of the Crown? Or are they merely a number of private persons banded together for a particular purpose? On looking at the statute it seems to me clear that they are the servants

of the Crown. By s. 2 of the Volunteer Act, 1863, "It shall be lawful for Her Majesty to accept the services of any persons desiring to be formed into a volunteer corps." By s. 3, a permanent staff is appointed by the Crown, and by s. 4, the officers are to be approved by Her Majesty, and to hold commissions. By s. 12, "Her Majesty may disband or discontinue the services of any volunteer corps whenever it seems to Her Majesty expedient to do so." It is clear that though volunteers are not paid, their services are offered to and accepted by the Crown. It is objected that the volunteers are not on actual military service; it is not intended that they should be, except in certain circumstances; but by s. 17, in case of actual or apprehended invasion of any part of the United Kingdom, the volunteers may be called out for actual military service. They are therefore in very much the same position as the militia, who may be embodied in "case of imminent national danger" (see 45 & 46 Vict. c. 49, s. 18). The property of the corps is vested by s. 25 in the commanding officer, and by s. 26 he may appoint a storehouse, which, subject to the approval of the lieutenant of the county, may be used as such. The Secretary of State can, as has been done in this case, insist on the presence of three resident non-commissioned officers upon the premises to be certified; and it is found in the case that their presence is reasonably necessary for the safe-keeping of the stores. It is also found that the whole of the premises are used for the purposes of the corps. It has been argued that the excepted portions of the premises are in excess of the accommodation required for the performance of public duties, and therefore that they are rateable on the authority of the cases which have been cited. But these premises are not within the principle of those cases; for looking at the volunteers as the servants of the Crown, it appears that the premises are used in the same way, and for the same purposes, as if they were Crown property, and they are occupied by persons who

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COLLINS, J.: I am of the same opinion. The question in this case is whether a building erected and used as a storehouse under s. 26 of the Volunteer Act, 1863, is rateable. Two grounds were put forward by the appellant why it was not:—(1) that it came within the exception given by s. 26; and (2) that by the general law the buildings are under the circumstances of their occupation exempt. I think the appellant's contention is sound. I am not sure that the whole may not come within the exemption given by s. 26 to a "storehouse"; but whether it does or does not, I think the whole comes within the general exemption. It is found in the case, that the premises (which means the whole of the premises), have been duly certified as a storehouse under s. 26. The whole being so certified, *prima facie* the whole comes within the statutory exemption. It was open to the respondents to show that part of the premises was not in fact occupied as a storehouse. But in order to make it rateable, they would have to show that the part was not occupied for any purpose connected with the occupation of the storehouse; and further, that it was beneficially occupied. The facts as to the occupation are found by the arbitrator, and I am not sure that I am precluded from saying that the whole is occupied as a storehouse. The case says "the premises also serve the purposes of a place of meeting for drill, military instruction, &c." That looks as though that part was not used as a storehouse; but further on, in paragraph 8, the arbitrator seems to treat the whole as a storehouse, with certain exceptions (*viz.*, the officers' room, the canteen, &c.), which do not include the places used for drill or military instruction, so that the

drill hall would seem to be part of the storehouse. The question therefore arises, whether the parts excepted are outside the exception intended to be given by the statute to "storehouses." The arbitrator has found that the rooms mentioned as excepted parts in paragraph 8 "are not storehouses within the meaning of s. 26." It was not contended that they were. But if, in order to have a "storehouse," it is necessary to have three non-commissioned officers resident on the premises, their bedrooms would come as clearly within the exception as the rooms in which the stores were actually kept. It is found that the military authorities insist on the presence of these three non-commissioned officers; that carries with it the right to reasonable accommodation for such persons properly incident to their station in life. A large part of the excepted rooms comes within that exemption. It is true that the officers' mess-room and the ante-room are not within this, but it is not clear, and it is not found as a fact that it is unreasonable that the officers should have these rooms for the purposes of the store. But whether this is right or wrong, and even if these excepted parts are outside the designation of a "storehouse," I still think that, on the findings, the premises are within the exemption of property occupied for the purposes of the Crown. This depends upon the question whether the volunteers are the servants of the Crown. It is clear on the authorities that the regular forces and the militia are servants of the Crown: then are volunteers in the same category, so as to admit of an occupation for volunteer purposes being deemed to be an occupation for military purposes? If so, that occupation is exempt. This depends on two questions:—(1) whether on the construction of the Volunteer Act, 1863, we can come to the conclusion that the volunteers are in the same category as the regular army; and (2) whether the occupation in this particular case is referable to the proper discharge of military duties by the volunteers. On turning to the Act, I find that, by s. 2, "it shall be lawful for

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her Majesty to accept the services of any persons desiring to be formed into a volunteer corps, and offering their services." It is clear, therefore, that a volunteer corps cannot be constituted by private persons, and that it rests, for its ultimate sanction, on the acceptance by the Crown. The Crown, under s. 4, approves the appointment of the officers, and, through the lieutenant of the county, grants them their commission (*a*). By s. 11, her Majesty by Order in Council may declare what is requisite to entitle a volunteer to be deemed efficient; by s. 12, her Majesty may disband or discontinue the services of any volunteer corps; and by s. 16, a Secretary of State may make regulations for the general government and discipline of the volunteer force. Section 6 and the schedule to the Act gives the form of oath to be taken by officers and volunteers:—"I, A. B., do swear . . . that I will faithfully serve her Majesty in Great Britain for the defence of the same, &c., according to the conditions of my service.") Section 22 contains provisions as to the discipline of the permanent staff when not on actual military service. It is true that until the volunteers are called out, the general body are not, though the permanent staff are, under the Mutiny Act. But, when called out, they are, by s. 23, all put upon the same footing as the regular army. The affirmative answer to the first question is therefore made out: as the soldier is the servant of the Crown, so also is the volunteer: and

(*a*) The Court seem not to have noticed that by the Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 6, "All jurisdiction, powers, &c. over, of, or in relation to (*inter alia*) the volunteers, vested in or exercisable by the lieutenants of counties shall revert to Her Majesty, and shall be exercisable by Her Majesty through her Secretary of State:" and "all officers in the volunteers . . . shall hold commissions from Her Majesty, and such commissions shall be prepared, authenticated and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated and issued, according to any law or custom for the time being in force." The Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), repeals s. 4 of the Volunteer Act, 1863.

The judgment, in form, therefore, is based in part upon a repealed section; but it is submitted that the effect of the substituted enactment strengthens the argument of the learned judge, in that it places the volunteers and the regular army more clearly within the same category.

occupation for volunteer purposes is occupation for military purposes. As to the second question: it is found that "the whole of the premises are used solely for the purposes of the corps, and the appellant has no use or occupation of the premises other than as colonel commanding the said corps, and in discharge of his duties as such." That finding cuts at the root of the argument based on the authorities cited on behalf of the respondents, because it narrows down the occupation to an occupation which is necessary to the discharge of military duties, and therefore negatives any beneficial occupation. There is no controversy as to any principles of law, and it is not necessary to go through all the authorities. It is clear law that Crown property may be rateable if it be not occupied for Crown purposes: that occupation and not ownership determines the question of exemption; and that property which is not vested in the Crown may be exempt if it is occupied for the purposes of the Crown. There have been a number of cases in which the question is whether the facts of the particular case bring it within one of these general principles. A canteen within a prison was held rateable (in *Gambier v. Overseers of Lydford* [1854], 3 E. & B. 346), because it was the subject of beneficial occupation. A police officer's house without the precincts of the station was held rateable, in *Martin v. West Derby Union* [1883], 11 Q. B. D. 145. There the principle was conceded: once given a building which can be described as one, any occupation of that (if the building as a whole be occupied for the purposes of the Crown), is exempt. But a distinction was drawn, that if once you get outside the ambit of such a building, then the question of immunity is tried by another standard. Here all the premises are within the ambit of one house.

I am clearly of opinion that we must answer the first question asked us in the affirmative, and hold the whole of the premises exempt.

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Appeal allowed.



Q. B. D.

R. v. SIMMONS AND ANOTHER.

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May 4.*Caretaker entered in Rate Book—Application for Distress Warrant—
Jurisdiction of Justices—Conclusiveness of Rate Book.*

The caretaker of a dwelling-house was entered as occupier in the rate book. He did not appeal against the rate, but upon the application for a distress warrant, on non-payment of rates, tendered evidence to show that he resided in the house as caretaker only. The justices held that the entry in the rate book was conclusive, and that they had no jurisdiction to inquire whether the person summoned was or was not the occupier.

Held, that the rate book was not conclusive, and that the justices were bound to hear the evidence tendered.

R. v. Bradshaw [1860], 29 L. J. M. C. 176, distinguished.

RULE *nisi*, under 11 & 12 Vict. c. 44, s. 5, calling upon two justices of the county of London to show cause why they should not hear and determine a summons for a distress warrant for non-payment of poor rates.

On an application for a distress warrant against L. J. Parry for non-payment of poor rates in respect of a dwelling-house, evidence was tendered on behalf of Parry to show that he resided in the house as a caretaker only. It was objected on behalf of the overseers that Parry's name appeared in the rate book as occupier, that he had not appealed against the rate, and that therefore the rate book was conclusive. The justices held that as Parry's name was on the rate book, they had no jurisdiction to consider the question of occupation, and made the order asked for.

This rule was then obtained on behalf of Parry, notice being given to the overseers.

Edmundson, for the overseers, showed cause: The question whether a person, claiming to be merely a caretaker, is rateable, is matter of appeal to Quarter Sessions against the rate: see *Yates v. Chorlton-upon-Medlock* [1883], 48 L. T. N. S. 872. If Parry had not been in occupation at

all, no doubt he could have disputed his liability on the hearing of the summons for a distress warrant. In *R. v. Bradshaw* [1860], 29 L. J. M. C. 176, the head-note says: "As soon as the person summoned is shown to be in the visible occupation of the property rated within the parish, the justices are bound to issue a warrant of distress, and cannot go into the question of whether or not the occupation be beneficial, which is matter only for the quarter sessions on appeal." Parry was admittedly in visible occupation, and therefore the justices were bound to issue the warrant. [VAUGHAN WILLIAMS, J.: The word "visible," in the sense in which you use it, is not warranted by the judgments in *R. v. Bradshaw*. There the person rated was an executor who had left an old servant of the testator in the testator's house, and did not himself live there. Hill, J., says (29 L. J. M. C. at p. 179): "Occupation in fact is admitted, therefore the magistrates had jurisdiction."]

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J. H. Williams in support of the rule: The question of occupation was in this case the very point in dispute before the justices, and *R. v. Bradshaw* has therefore no application. In *Fourth City Mutual Building Society v. West Ham*, [1892] 1 Q. B. 661, a mandamus to state a case was issued to justices sitting to hear a summons for a distress warrant, which implies that the magistrates can inquire who is the occupier. A case was also stated in *R. v. Lord Mayor of London* [1887], 57 L. T. N. S. 491 (a).

VAUGHAN WILLIAMS, J.: A mandamus must go directing the justices to hear and determine the question whether Parry is in fact in occupation. It has been said that an admission that he was in occupation has been made by Parry in the affidavits on which this rule was

(a) The attention of the Court was not called to the fact that the case was stated in *R. v. Lord Mayor of London* upon the very point now being argued.

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obtained. If it be so, it is immaterial, because that admission was not before the justices. They were told that he wished to raise the question, and they answered that they could not entertain it, because the rate book was conclusive. I think they were wrong, and that they were bound to hear the evidence. When the case comes back to the justices, if they are satisfied that Parry is in fact a mere servant, they ought to find (i) that he is not in occupation; and (ii) that his master is.

BRUCE, J.: It is clear that the rate book was not conclusive, and that the question of occupation was a question of fact for the justices. When they hear the evidence, if any difficulty arises, they can state a special case for this Court.

J. H. Williams asked that the rule might be made absolute with costs against the overseers, as they had taken the objection before the justices, and appeared to show cause against the rule.

WILLIAMS, J.: The rule will be made absolute with costs against the overseers: they ought to pay them.

Rule absolute.



C. A.

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July 17.

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RY. CO. v.
ASSESSMENT COMMITTEE OF DONCASTER UNION.

Power to make a River navigable—Towing Path—Easement—Occupation.

A company (the appellants' predecessors in title) were by statute authorized to make the river Dun navigable, and for that purpose to clear, scour, open, enlarge, straighten, or deepen the river, and to appoint and set out towing paths: and the navigation was declared free for all persons on payment of certain rates or tolls. The appellants (or their predecessors) made and kept the river

navigable, and kept the towing paths in repair, raising the level thereof in certain places : but they did not act as carriers for hire on the river.

Held by the Queen's Bench Division, on the authority of *R. v. Mersey and Irwell Navigation* [1829], 9 B. & C. 95; *R. v. Thomas* [1829], 9 B. & C. 114; and *R. v. Aire and Calder Navigation* [1829], 9 B. & C. 820, that the appellants were not rateable in respect of the natural river bed, because they were not occupiers, and had merely an easement : but that they were rateable in respect of the towing path.

But held by the Court of Appeal, reversing the decision of the Queen's Bench Division as to the towing path, that the appellants were not rateable either in respect of the natural river bed, or of the towing path.

Badger v. S. Yorkshire Ry. [1858], 28 L. J. Q. B. 118, followed.

Bruce v. Willis [1840], 11 A. & E. 463, distinguished.

SPECIAL case stated by consent and by order of Wright, J. under 12 & 13 Vict. c. 45, s. 11, after notice of appeal to the quarter sessions of the West Riding of Yorkshire against rates made for ten parishes in the Doncaster Union.

The special case, so far as is material, is as follows :—

1. By statute 12 Geo. 1, c. xxxviii., s. 1, the company of cutlers in Hallamshire were empowered to make the river Dun navigable for boats of twenty tons burthen from Holmstile in the parish of Doncaster to the westward extremity of the township of Tinsley in the said West Riding, and for that purpose to clear, scour, open, enlarge, straighten or deepen the said river Dun, or any goits, drains or sluices out of the same, and to dig or cut the banks of the said river Dun, and to make any new cuts or trenches or passages for water in, upon, or through the lands adjoining or near unto the said river Dun as should be necessary and proper for the navigation of such vessels as aforesaid, and also to cut, remove, and take away all trees, beds of gravel, sand or mud, quarries of stone, or any other impediment whatsoever which might anyways hinder navigation either in sailing, haling, towing or drawing boats and vessels with men or horses, or otherwise upon

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the said river Dun, or upon any cuts or dams out of the same, or any new cuts, trenches or passages so from time to time to be made on any lands thereto adjoining, and to build, erect, set up and make in, over, or on the said river and lands adjoining or near to the same, or over the said new cuts, trenches or passages, so many bridges, sluices, locks, weirs, pens for water, tanks, dams, wharfs, ware-houses, quays, landing-places, weigh-beams, cranes, and other works, ways and privileges as should be necessary and convenient upon and near the said river or cuts, and when proper and convenient to alter, repair and amend the same, and to have, make and use necessary ways, passages and other conveniences for the carrying and conveying any goods, wares, merchandizes and other things in, upon, to and from the said river, wharfs, landing-places, passages, trenches or cuts, and for carrying and conveying all manner of stone, brick, timber, gravel, earth, lime, and materials for perfecting and completing the said works and navigation, and for altering, repairing and amending the same, and (amongst other powers) to pull down, alter or demolish any mill, weir, or other obstructions in, upon or contiguous to the said river, cuts or passages which might obstruct or hinder the navigation thereof, and to appoint and set out towing-paths, banks and ways for towing, haling and drawing boats and vessels passing in and upon the said river and cuts, and from time to time and at all times thereafter to do all other things necessary for making, maintaining, continuing and perfecting the navigable passages of the said river and cuts, doing as little damage as might be, and first giving satisfaction to the owners of such mills, weirs, lands, tenements or hereditaments as might be pulled down, removed, or otherwise made use of for the purposes aforesaid, or that in anywise might be prejudiced or damaged by the effecting and continuing or maintaining the said navigation.

2. By the 26th section of the same Act, the said navigation was declared to be free for all persons upon payment

of the rates and duties authorized to be taken by the Act ;
 and by the 27th section it was provided that the owners of
 the adjoining lands might use pleasure boats on the navi-
 gation without payment, and might exercise rights of
 fishing and fowling thereon.

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3. By 13 Geo. 1, c. xx., s. 1, the corporation of Don-
 caster were empowered to make the said river Dun navig-
 able from Holmstile aforesaid to Wilsick House, and to
 maintain it in a navigable condition. The powers conferred
 on the corporation of Doncaster by this Act are substantially
 the same as those given to the company of cutlers in
 Hallamshire by the Act 12 Geo. 1, c. xxxviii. Sect. 29
 of the later Act empowers the corporation of Doncaster to
 purchase lands for the purpose of making towing-paths.

4. By 6 Geo. 2, c. ix., the company of proprietors of the
 navigation of the river Dun was incorporated, and the
 respective property rights and privileges of the company
 of cutlers in Hallamshire, and of the corporation of Don-
 caster, in the navigation of the river Dun, became vested in
 such new company, who, by s. 3, were empowered to pur-
 chase and hold lands for the purposes of the navigation.
 By s. 9, power was given to the company to make bye-
 laws for the good government of the undertaking.

5. By 1 & 2 Geo. 4, c. xlvi., further powers were given
 to the company of proprietors of the navigation of the
 river Dun, and (among others) to make a certain new cut
 and (s. 3) a moveable weir. By s. 33, the new cut and weir
 were to be deemed part of the navigation. By ss. 27 and
 28, provision was made for fencing off the towing-paths on
 the side of the cuts and canals made by virtue of the Act
 now in recital from the lands adjoining thereto; and by
 s. 38, the proprietors were empowered to fix mooring posts
 in convenient places for guiding and mooring vessels.

6. By 7 Geo. 4, c. xcvii., s. 1, the company were em-
 powered to make further improvements in the navigation;
 and by s. 29, any new cuts thereby authorized to be made
 were to be deemed part of the navigation.

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7. By 10 & 11 Vict. c. cccxi., the South Yorkshire, Doncaster and Goole Railway was authorized to be made, and the railway company thereby incorporated were empowered to purchase (amongst other things) the undertaking of the river Dun navigation. By s. 60 of this Act it was enacted that the river Dun navigation, and all cuts, reservoirs, aqueducts, feeders, water tanks, basins, pens, dams, embankments, weirs, locks, sluices, culverts, drains, soughs, tunnels, arches, sewers, bridges, fences, gates, ways, roads, railroads, towing-paths, landing-places, docks, quays, wharfs, houses, warehouses, toll-houses and other buildings, cranes, weighing machines, engines and other works to the same navigation, cuts, branches and communications respectively belonging, and the ground and soil thereof respectively, and of every other the lands, rents, and hereditaments, easements and appurtenances whatsoever, of or to which the said navigation company, by virtue of their Acts, or by any other means whatsoever, were seized, possessed of or entitled to at law or in equity, should belong, and the same were thereby vested in the company thereby incorporated. By ss. 68 and 69, all the rights and powers of the navigation company were extended to the railway company thereby incorporated.

By s. 93, the railway company were required to keep the navigation open and in good working order and condition for the use of all persons desirous to use and navigate the same. By s. 95, the company were to give no undue preference in respect of any persons, vessels, or goods, and by s. 96, they were authorized to receive the tolls mentioned in the schedule to the Act. Such tolls consisted of so much per ton per mile in respect of different classes of goods passing along the river Dun navigation.

8. By the operation of 27 & 28 Vict. c. lxxvii. and 37 & 38 Vict. c. cxxxi., the undertaking of the South Yorkshire Railway, including the river Dun navigation and all the rights, powers, and privileges in connection therewith of the South Yorkshire Railway Company (formerly the

South Yorkshire, Doncaster and Goole Railway Company), were transferred to and became vested in the appellants, the Manchester, Sheffield and Lincolnshire Railway Company. The expression "undertaking," as defined by these Acts, includes all navigations and canals, and the lands, tenements, and hereditaments, stations, wharves, towing-paths, and warehouses, belonging to the South Yorkshire Railway Company.

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9. The appellants (under the provisions of the said Acts or some of them) from time to time dredge, cleanse, and keep open the waterway of the said navigation, and repair and keep in good working condition the several cuts, channels, and locks connected therewith. They also keep in repair the river banks supporting the towing-paths, and mend the towing-paths with gravel or stones to a depth, in some cases, of eight or nine inches. In some parts of the navigation mooring-posts have been placed on the banks of the river and of the artificial cuts which are used to divert or guide vessels into the several cuts or locks and also as mooring-posts.

10. Where the towing-paths adjoin the appellants' own lands they are generally fenced off from such lands, and where they adjoin the lands of other persons they are (except in one or two instances) unfenced, and such persons use them for hauling their own barges (in cases where they possess any), for watering their cattle, and for other purposes. The public, when so minded, use the towing-paths as common highways without interference. At one point the appellants have placed a door on the towing-path which they keep locked at night and on Sundays. This has been done at the request of an adjoining proprietor, who complained of the damage done by trespassers. The appellants have occasionally prosecuted persons for breaches of the bye-laws made under the powers of the said Acts.

11. The appellants are not carriers for hire on the said

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navigation. They have no boats or barges, except such as are used for keeping the navigation open and in good repair. They have no wharves on that part of the navigation which is the subject of the present appeal, and they do not supply horse or other power for hauling the vessels using the navigation. The only charges which they make against the public in return for keeping the navigation open and in good repair are the tonnage dues which they are authorized to receive under their Acts.

12. When the wind is favourable the vessels using the navigation are frequently propelled by sails only. On all other occasions they are hauled by horses or men on the towing-path.

13. Part of the said navigation consists of the said river Dun flowing in its natural course and from time to time dredged and improved as aforesaid, and the remaining part consists of artificial channels, cuts, and locks made under the powers of the various Acts of Parliament. There is a continuous towing-path both along the natural river course and the artificial cuts and channels. At one point on the river the appellants have purchased and are the owners of a mill with a weir extending across the whole bed of the river.

15. The appellants admit that they are liable to be rated to the relief of the poor in respect of all artificial cuts, channels, canals, locks, and other works forming part of or used in connection with the said navigation in each township in which such artificial cuts, channels, canals, locks, and other works are respectively situated, including the towing-paths along such artificial works. They contend, however, that they ought not to be rated in respect of the natural river course or the towing-path on the banks thereof, inasmuch as they have only an easement and right of way in and over such natural river course and towing-path, and have no such exclusive possession of them, either as owners or occupiers, as will render them liable to be rated in respect thereof.

In support of their said contention they rely upon the following cases:—

R. v. Mersey and Irwell Navigation [1829], 9 B. & C. 95; *R. v. Thomas* [1829], 9 B. & C. 114; *R. v. Aire and Calder Navigation* [1829], 9 B. & C. 820; *R. v. Aire and Calder Navigation* [1832], 3 B. & Ad. 139; *Badger v. South Yorkshire Railway and River Dun Navigation Co.* [1858], 28 L. J. Q. B. 118.

16. The respondents contend that the appellants are liable to be rated both in respect of the natural river course and of the towing-path on the banks thereof, or, at any rate, in respect of the towing-path. They contend that the words of the 60th section of 10 & 11 Vict. c. cexci. (set out in paragraph 7) distinguish the present case from those in the authorities relied upon by the appellants, and, if not, they affirm that those authorities cannot be regarded at the present time as good law. They say that, upon the facts above stated, the appellants have such an occupation of the natural river course, and the towing-path on the banks thereof, as will support the rate. They further contend that if the appellants are held to be in occupation of the said towing-path only it will be immaterial, so far as the amount of the rate is concerned; for in that case the river course must be considered as an accessory to and enhancing the rateable value of the towing-path. They further contend that, even assuming that the appellants are not liable to be rated in respect of the natural river course and the towing-path on the banks thereof, still the total amount of the rate in those townships where there are both natural river bed and artificial canals and other works, ought not to be reduced, for in that case the rateable value of the artificial canals, locks, cuts, and channels would be enhanced to an equal amount by the user in connection therewith of the natural river course and towing-path, without which they would be practically worthless.

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1893. In support of the said contentions they rely upon the following cases:—

M.S. & L. RY. *R. v. Mayor of London* [1790], 4 T. R. 21; *Bruce v. Willis* [1840], 11 A. & E. 463; *Chelsea Waterworks v. Bowley* [1851], 17 Q. B. 358; *Roads v. Trumpington* [1870], L. R. 6 Q. B. 56; *Pimlico Tramway Co. v. Greenwich Union* [1873], L. R. 9 Q. B. 9; *Metropolitan Rail. Co. v. Fowler*, [1892] 1 Q. B. 165.

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The questions for the opinion of the Court are:—

1. Are the appellants liable to be rated to the relief of the poor in respect of their occupation of the natural river course and the towing-path on the banks thereof in the several townships respectively or in respect of either, and, if so, of which of them?

2. If the appellants are not liable to be rated in respect of their occupation of such natural river course and towing-path or either of them, ought the existing rates to stand, or should they be reduced, and, if so, upon what principle?

The judgment of the court of quarter sessions is to be entered in accordance with the opinion of the Court upon the questions.

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Smyly, Q.C. (*C. M. Atkinson* and *F. Dent* with him), for the appellants: The appellants have a right to dredge only for the purpose of protecting the navigation; they could not (*e. g.*) dredge in order to make a profit by the sale of gravel. A mere easement has never been held rateable. [COLLINS, J.: In *Lancashire Telephone Co. v. Manchester Overseers* [1884], 14 Q. B. D. 267, the company were held rateable in respect of the right to fix a post or spike on the top of a house.] Because they had an exclusive occupation of part of the house, and had an attachment to the soil. In four parishes the appellants are rated only in respect of the natural river bed; in six parishes they are rated in respect of both artificial canal and natural river bed; and assuming that this Court holds that they are not rateable in respect of the natural river bed (or of the towing-path

on its banks), the rates in the four parishes will be quashed *in toto*, and in the other parishes should (it is submitted) be reduced in proportion to the mileage of the old river. No other principle of apportionment is possible. [The following cases were cited in addition to those mentioned in the special case: *Hollis v. Goldfinch* [1823], 1 B. & C. 205; *Cory v. Bristow* [1877], 2 App. Cas. 262; *Cory v. Greenwich* [1872], L. R. 7 C. P. 499; *Grant v. Oxford Local Board* [1868], L. R. 4 Q. B. 9.]

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Balfour Browne, Q.C. (*F. Marshall* with him), for the respondents: The decisions in rating cases have been progressive, and it cannot now be said that an easement is not rateable. The logical result of *Lancashire Telephone Co. v. Manchester Overseers* [1884], 14 Q. B. D. 267, is, that a wire which passes over land in a parish is rateable there, even though it be attached to land only in another parish. It may be that attachment is necessary, but it need not be attachment in the same parish. Decisions that telephone wires and tramways are rateable must be taken to have overruled *R. v. Mersey and Irwell Navigation* [1829], 9 B. & C. 95, and *R. v. Thomas* [1829], 9 B. & C. 114; *R. v. Aire and Calder Navigation* [1829], 9 B. & C. 820. It is true that in *Badger v. South Yorkshire Ry. Co.* [1858], 28 L. J. Q. B. 118, which dealt with the appellants' predecessors in title, it was held that they had not the fee in the towing-paths now in question, and had only an easement; but that was an action of ejectment, and the question whether the defendants were in occupation and so rateable was wholly irrelevant. By 10 & 11 Vict. c. cxc. (set out in par. 7 of the special case, *supra*, p. 322), the towing-paths, &c. were "vested" in the company. The word "vest" implies exclusive occupation: see *Coverdale v. Charlton* [1878], 4 Q. B. D. 104; *Rolls v. St. George's, Southwark* [1880], 14 Ch. D. 785; *Wandsworth Board of Works v. United Telephone Co.* [1884], 13 Q. B. D. 904. Even if the natural bed of the river be not in the occupation of the

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appellants, if they are rateable in respect of the towing-path, that must be rated at its value as enhanced by reason of the proximity of the non-rateable watercourse. [COLLINS, J. : The rate is made upon two subject-matters, viz., the river bed and the towing-path ; if we hold that one of the two is not rateable, surely we cannot go further, and inquire whether the assessment committee might not arrive at the same result by a different method.]

Smyly, Q.C., in reply : It is admitted that the question here is one of occupation, not of ownership. *Badger v. South Yorkshire Ry. Co.* [1858], 28 L. J. Q. B. 118, was an action of ejectment, and the plaintiffs, who succeeded, had to show not merely that the defendants had not the fee, but that they themselves had (as against the predecessors in title to the present appellants) the right to immediate possession ; this right is wholly inconsistent with any exclusive occupation by the defendants. In *Bruce v. Willis* [1840], 11 Ad. & E. 463, the special Acts, in effect, made the Navigation Company purchasers of the land. Lord Denman, C.J., said (at p. 480), "The company take the land entirely to their own purposes." The suggestion that if the appellants are not rateable in respect of the river bed, they are rateable in respect of the towing-path at the same amount, is met by *R. v. Aire and Calder Navigation* [1832], 3 B. & Ad. 139, in which the Navigation (who were not rateable in respect of the river) were held not rateable in respect of a dam which upheld the water of the river and rendered it navigable.

LAWRANCE, J. : The questions asked us are stated at the end of the special case. We have already intimated that the Court does not desire to do more than answer the first question, and that we refuse to answer the second, following the general rule in cases such as this. The first question, so far as it relates to the occupation of the natural river bed, we answer in the negative, on the authority of the cases cited for the appellants in the

special case, viz., *R. v. Mersey and Irwell Navigation* (1829), 9 B. & C. 95; *R. v. Thomas* (1829), 9 B. & C. 114; and *R. v. Aire and Calder Navigation* (1829), 9 B. & C. 820. We think, as to this point, we are concluded by authority, and whether those cases are reconcileable with late decisions or not, we are bound by them until they are overruled. But for those cases, I should myself have been strongly of opinion that the appellants were in exclusive occupation of the old river bed; but, in the face of those cases, it is impossible for us to hold that. It seems to me that they cannot be reconciled with the decisions as to telephone wires and water pipes: *Lancashire Telephone Co. v. Manchester Overseers* [1884], 14 Q. B. D. 267; *Chelsea Waterworks Co. v. Bowley* [1851], 17 Q. B. 358. The first question, so far as it relates to the towing-path, we answer in the affirmative, on the authority of *Bruce v. Willis* [1840], 11 A. & E. 463, which is to my mind undistinguishable. There the company had power to make new cuts and make the old river navigable; and, by a subsequent Act, the company were authorized to make a towing-path for horses. Compensation was to be made and to be settled by a jury. The company paid the money, but no conveyance was executed; it was held that the company were rateable. In the present case it is clear that whatever land was wanted for a towing-path, either by the side of the old river, or of the new cuts, that the proprietors of the navigation had power to take on making satisfaction. They had (as was the case also in *Bruce v. Willis*) the exclusive possession of the towing-path, subject to certain trifling rights of the landowners. There is no doubt here that the land occupied by the towing-path, to whomsoever it belonged, could be generally used only by the proprietors of the navigation, and that the landowners could use it only for certain limited and specified purposes. So, too, water-pipes may be rateable, although the public may have some rights of user with regard to them.

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COLLINS, J. : I am of the same opinion. A great part of the argument that has been addressed to us would have been better fitted for the Court of Appeal. For, I think, we are bound by authority on both points raised by the first question. As to the natural river bed, in my opinion the cases cited in paragraph 15 of the special case, are distinct authorities that a canalized river, in conditions substantially identical with those which are found in the present case, is not rateable. No doubt has been thrown upon those decisions by any subsequently decided case, and it is therefore not for us to consider the principle of those decisions. As to the river, therefore, we are concluded by authority ; and as to the towing-path, we are bound by *Bruce v. Willis* [1840], 11 A. & E. 463, which, for all practical purposes, is on all fours with this case. Mr. Smyly distinguished the special Acts, but, as to the point decided, they are not different from the Acts now before us. For there the question was not whether the person rated had the fee simple, but whether he had exclusive occupation. A ratepayer may or may not have the fee. I do not find any sound distinction between the user of the towing-path in the two cases. To create rateability, there need not be absolutely exclusive occupation for all purposes ; it is enough if it be exclusive for one. In *Badger v. South Yorkshire Ry.* [1858], 28 L. J. Q. B. 118, it was held that the company had not acquired the fee of the towing-paths, but Williams, J. (who had also previously decided *Bruce v. Willis*), at the close of his judgment said, "Generally speaking, in the absence of express words, the Courts are not inclined to infer that a statute of this kind gives more than such a use of the soil as is necessary for the purposes of the navigation." This was said after an examination of the conditions found in *Bruce v. Willis*, in which the Bath Navigation were held rateable in respect of their towing-paths ; it shows, therefore, that if a person has such a use of the towing-paths as is sufficient for the purposes of

navigation, that brings him within *Bruce v. Willis*, and he is rateable.

The second question, for the reasons already given by Lawrance, J., I think we are not called upon to answer.

Appeal allowed.

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The assessment committee appealed against this decision so far as it related to the natural river bed, and there was a cross appeal by the railway company as to the towing-paths.

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July 17.

The arguments were the same as in the Court below.

Balfour Browne, Q.C., and *F. Marshall*, Q.C., for the assessment committee; *Sir R. E. Webster*, Q.C., *Smyly*, Q.C., and *C. M. Atkinson*, for the railway company.

LORD ESHER, M.R.: In my opinion the first appeal fails. It is clear that no property in the natural bed of the river passed under any of the Acts to the company or any of their predecessors; and that no possession of any part of the bed of the river passed. The Acts gave only powers to dredge, to remove impediments to navigation, and to charge tolls; in effect, for the valuable work done by the company, they were to be paid by tolls, but no property in or possession of the bed of the river was given to the company; and if we are asked whether the company are rateable in respect of the river bed, we say no. It has been contended that in respect of parts of the river bed they may be rated, because, for example, they are in possession of part of the bed by means of posts. If the occupation by a post is valuable, they may be rated for that occupation; but we are not asked any question as to this point in the special case. Then as to the towing-path:—we have nothing to do with the towing-paths by the side of the new cuts, as to which the Acts say the company may purchase land and make the cuts and the towing-path.

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There the company are the owners of the land over which the water flows, and on which the towing-paths are made; the owner is in occupation of his own land. But as to the towing-paths by the side of the natural river—the only statute which we need consider is 12 Geo. 1, c. xxxviii., s. 1, and the proper construction of that section is not for us to determine, because we are bound by a decision of the Exchequer Chamber in *Badger v. South Yorkshire Ry.* [1858], 28 L. J. Q. B. 118. The Court in that case had to interpret the very section now before us, and they held, as the reason of their decision—the terms of the section leaving it doubtful whether exclusive possession had been given—that the Act gave a mere easement and not exclusive possession. It is part of the general law of rating that a man cannot be rated for a mere easement which does not amount to exclusive possession. We are therefore against the assessment committee on the first point; and the second appeal must be allowed. I think the Court below did not give full weight to *Badger v. South Yorkshire Ry.*

KAY, L.J.: I am requested by Bowen, L.J., to say that he agrees with our judgment (a). On the first point I think the Court below were altogether right; there is nothing in the Acts to vest the bed of the river in the company, or to give them exclusive occupation. It is therefore not possible to treat them as being rateable. As to the towing-paths by the side of the natural river, in my opinion *Badger v. South Yorkshire Ry.* [1858], 28 L. J. Q. B. 118, completely decides the point. There is nothing in the Acts obliging the proprietors of the navigation to purchase land for towing-paths, and I have no doubt that in fact paths already existed by the side of the old bed; there is at most an obligation to keep such paths in repair. The company were not bound to purchase, but were to make satisfaction for the use of land at the rate of

(a) At the conclusion of the arguments, Bowen, L.J., left the Court. -

twenty-five years' purchase, which does not mean that they were to purchase the land. I find nothing in the Acts obliging the company to purchase, or giving them exclusive possession of these towing-paths; and, apart from *Badger v. South Yorkshire Ry.*, I should have come to the same conclusion. There is a marked distinction between the towing-paths by the side of the natural river, and those by the side of the new cuts. In the latter case the land must be bought, and when bought must be fenced. It was sought to make a distinction between parts of the towing-paths made by the side of the old river under different Acts; but no such distinction is made in the special case, and there is no suggestion that any land was in fact bought. It is contended that, under 13 Geo. 1, c. xx., s. 29, power was given to purchase lands for making towing-paths; but it is not shown that any land was in fact purchased. The Acts by themselves do not vest any land in the company without a conveyance, and therefore the distinction between this case and *Bruce v. Willis* [1840], 11 A. & E. 463, is as broad as can be. Under the Acts relating to that case the land did vest, and no conveyance was wanted.

No attempt is made in the special case to distinguish the towing-paths made under the different Acts, and therefore they must all be treated as in one category. On the authority of *Badger v. South Yorkshire Ry.* [1858], 28 L. J. Q. B. 118, we must hold that the company had a mere easement over these towing-paths, and therefore they are not liable to be rated in respect of them.

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Kay, L.J.

First appeal dismissed ; cross-appeal allowed.



C. A.

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June 9, 19.

Notice of Appeal—Next practicable Sessions—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1—17 Geo. 2, c. 38, s. 4.

An assessment committee on March 9, 1893, heard and determined an objection under s. 1 of the Union Assessment Committee Amendment Act, 1864, against the assessment of a railway in South Wales, which belonged to a railway company having an office in the neighbourhood, but was worked under the control of W., who resided in Edinburgh. The directors of the company met on March 10, communicated with W., and instructed their solicitor to take counsel's opinion upon the grounds of appeal. The opinion was received on March 17. On March 22, notice of appeal to the quarter sessions, to be held on April 7, was given. On April 7, the appellants (in pursuance of notice given to the assessment committee on the day before) applied to the sessions to enter and respite the appeal. On objection by the assessment committee, the sessions dismissed the appeal on the ground that the giving of twenty-one days' notice of appeal, as directed by s. 1 of the Union Assessment Committee Amendment Act, 1864, was a condition precedent to the right of appeal.

Held, by the Queen's Bench Division and the Court of Appeal, that under the special circumstances of the case the sessions held on April 7 were not the next practicable sessions, and that a mandamus must issue to hear and determine the appeal.

Liverpool Gas Co. v. Everton [1871], L. R. 6 C. P. 414, distinguished.

What is the proper way of reckoning the twenty-one days' notice required by s. 1 of the Union Assessment Committee Amendment Act, 1864, *quære*.

RULE *nisi* calling upon the justices of Carmarthen to show cause why a mandamus should not issue commanding them to hear and determine appeals against poor rates for two parishes in the Llanelly Union.

The Llanelly and Mynydd Mawr Railway Company duly gave to the assessment committee of the Llanelly Union notice of objection to the assessment of their property in two parishes. The assessment committee fixed September 8th, 1892, for the hearing of the objection, but

adjournments having taken place at the request of the appellants, the objection was not heard and determined until March 9th, 1893, when the assessment committee dismissed it. The next quarter sessions were held on April 7th; and the appellants, on March 22, gave notice of appeal to that sessions. On April 6th, the appellants informed the solicitor of the assessment committee by telegram that an application would be made on the following day at quarter sessions to enter and respite the appeal, and asked the assessment committee to consent to the application, which they refused to do. On April 7th, objections were taken at quarter sessions by the assessment committee (1) that the giving of twenty-one days' notice, in accordance with the Union Assessment Committee Amendment Act, 1864, s. 1, was a condition precedent to the bringing of the appeal; and (2) that the standing orders of the sessions (requiring three days' notice of an application to enter and respite an appeal) had not been complied with. The justices upheld the objection on both grounds, and dismissed the appeal.

The appellants then obtained this rule, on affidavits which stated that the appellants' directors met and considered the decision of the assessment committee on March 10; that the line of railway was worked by a Mr. Waddell, who resided in Edinburgh, and with whom the directors wished to communicate; and that the directors took counsel's opinion as to the grounds of appeal, which opinion did not reach their solicitor until March 17.

F. Marshall for the assessment committee showed cause: By 17 Geo. 2, c. 38, s. 4, the appeal was given to "the next general or quarter sessions" on giving reasonable notice to the churchwardens and overseers, and by 12 & 13 Vict. c. 45, s. 1, fourteen days' notice must be given to the same persons. But by the Union Assessment Committee Amendment Act, 1864, s. 1, "before any appeal shall be heard by any . . . quarter sessions against a poor rate . . . the

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appellant shall give twenty-one days' notice in writing previous to the quarter sessions to which such appeal is made of the intention to appeal, and the grounds thereof, to the assessment committee." This makes the giving of the notice a condition precedent to the right of appeal. The appellants could only appeal to the next sessions, which means the next *practicable* sessions (though the word is not in any statute), *i.e.*, in this case to the sessions held on April 7th. The last day for giving the prescribed notice to the assessment committee was therefore March 16th (*a*), and this gave the appellants seven days to consider whether they would appeal. In *Liverpool Gas Co. v. Everton* [1871], L. R. 6 C. P. 414, six days was held sufficient. [COLLINS, J.: In that case, Montague Smith, J., based his decision on the absence of any "special circumstances." Are there not "special circumstances" in this case?] The appellants were themselves to blame in not foreseeing that the decision of the assessment committee might be against them; they should have taken counsel's opinion beforehand. If the Court are of opinion that the sessions of April 7th was not the next practicable sessions, the question whether the absence of notice to the assessment committee was a fatal objection does not arise.

Abel Thomas, Q.C., and *Benson*, were not called upon to support the rule.

MATHEW, J.: The justices have in this case deprived themselves of jurisdiction by an unwarranted conclusion of fact, *viz.*, that the appellants had a reasonable time in which to comply with the statutory requirements as to notice. The facts upon which the justices decided were peculiar. The appellants were objecting to a considerable increase of their assessments. This was a matter upon

(*a*) The case was argued on this assumption in the Queen's Bench Division, but not in the Court of Appeal.

which they might well wish to take counsel's opinion. They had an office in the locality, but wished to communicate with Mr. Waddell who was in Edinburgh. The directors informed him of the decision of the assessment committee, and took counsel's opinion, which reached them on the day after the last day for giving to the assessment committee notice of appeal to the April sessions. Therefore the appellants, acting in a reasonable way, could not possibly have given the necessary twenty-one days' notice for those sessions. We were much pressed with *Liverpool Gas Co. v. Everton* [1871], L. R. 6 C. P. 414. But in that case, it was held that the question "what is the next practicable session" is a question of fact to be decided on the particular circumstances of each case. Upon the abstract question whether six days *may* be enough to enable an appellant to consider whether he will appeal, it was held that it may. The rule in this case must be made absolute, with costs against the assessment committee.

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Mathew, J.

COLLINS, J., concurred.

Rule absolute.

The assessment committee appealed to the Court of Appeal.

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F. Marshall for the assessment committee: It was inadvertently assumed in the Court below that March 16th was the last day for giving notice of appeal, but s. 1 of the Union Assessment Committee Act, 1864, requires the appellant to give "twenty-one days' notice in writing previous to the quarter sessions to which the appeal is to be made." The sessions being held on April 7th, notice given on March 17th would be in time: *R. v. West Riding of Yorkshire* [1833], 4 B. & Ad. 685. [The rest of the argument may be omitted.]

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Abel Thomas, Q.C., and *Benson* for the railway company submitted that March 16th was the last day for giving notice of appeal, but were not called upon to argue.

The COURT (Lord Esher, M.R., Bowen and Kay, L.JJ.) held that the question what were the next practicable sessions was a question of fact; that, in the present case, assuming that a notice given on March 17th would have been in time, the sessions held on April 7th were not under the circumstances the next practicable sessions.

Appeal dismissed.



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THE HALKYN DISTRICT MINES DRAINAGE COMPANY *v.*
 THE ASSESSMENT COMMITTEE OF THE HOLYWELL
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Occupation or Easement—Watercourse—Tunnel—Drainage of Lead Mine.

The appellants, under a special Act, had power to make tunnels, and to repair, widen, and divert existing tunnels, and an open watercourse, for the drainage of certain mines, which were worked by persons other than the appellants. The tunnels were in places inclosed in iron tubing about five feet high, and in other places were bricked over. The appellants deepened the open watercourse, and built up the sides of it. No express conveyance or demise of land to the appellants was made, and the occupiers of the mines were entitled to use the tunnels provided they caused no obstruction to the drainage works. The appellants were entitled to certain royalties for every ton of minerals raised from the mines drained by means of the tunnels.

Held, that the appellants had more than a mere right of passage or access, and that their works amounted to exclusive occupation of the tunnels and watercourse, and that they were therefore rateable in respect of such occupation.

Talargoch Mining Co. v. St. Asaph Union [1868], L. R. 3 Q. B. 478, followed.

SPECIAL case stated by the quarter sessions for the county of Flint on appeals against rates made in respect

of drainage works situate respectively in the parishes of Halkin and Northop.

The quarter sessions confirmed the rates, subject to a case, stating the following facts:—

4. In and prior to 1818, the predecessor in title of the present Duke of Westminster was the owner of a large mineral estate in the parishes of Halkyn and Northop, and for the purpose of draining the mines thereon he commenced driving an adit level or underground tunnel, called the Halkyn deep level, to convey by gravitation the water from such mines into an artificial open cut or watercourse which he constructed at the mouth of such tunnel, and which communicated with and discharged into the Nant-y-Flint brook, a natural watercourse flowing into the sea. The driving of the said tunnel was subsequently continued by the Halkyn Deep Level Mining Co. for the drainage and development of some of the mines in the said mineral estate which had been leased to them, and, up to the date of the appellant company's formation, it had been driven by either the mine owner or mine occupiers, and had been solely used by the mine occupiers as part of their mining works for draining their mines.

5. By the Halkyn District Mines Drainage Act of 1875 (38 Vict. c. lviii.) [after reciting that the mines in the Halkyn district were flooded, and that any effective scheme for the drainage of the mines would be for the common benefit of all owners and occupiers of such mines, and that it had been found impracticable to obtain their co-operation, &c.], it was enacted that the Duke of Westminster and certain other persons therein named, all or most of whom were interested as owners or occupiers of the said flooded mines, should be incorporated by the name of the Halkyn District Mines Drainage Company.

6. By the said Act (s. 4), "subject to the provisions of this Act, the company may make, form, lay down, work, use and maintain the tunnels or adit levels hereinafter described . . . with all proper shafts, works, and conve-

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niences connected therewith, and may enter upon, take and use, or at their option may purchase and take an easement in, through, over or under, or right of using such of the lands delineated, &c., as may be required for that purpose."

7. By s. 7, "subject to the provisions and for the purposes of this Act, the company may purchase, lease or otherwise acquire by compulsion or agreement,

"(1.) The said tunnel or level called or known as 'the Halkyn Deep Level,' now in the occupation of the Halkyn Deep Level Mining Co. . . . or an easement in, through or over, or right of drainage through, or other right of using the same.

"(2.) The existing open cut or watercourse, fifty-two yards or thereabouts in length, which commences at the mouth of the said Halkyn Deep Level and runs into the Nant-y-Flint brook . . . or an easement in, through, or over, or right of drainage through, or other right of using the same."

8. By s. 8, "In the event of the company acquiring the said Halkyn Deep Level and the said existing open cut or watercourse, or any such easement or right as aforesaid, they may from time to time cleanse, repair, scour, deepen, widen, straighten, alter, enlarge, divert, and improve the same, or either of them, when and to such extent as may be necessary for the purposes of the company's undertaking."

10. By s. 12, the company may from time to time, for the extension of the said tunnels or adit levels or any of them, by agreement acquire, either by purchase or by way of lease, hire, exchange, or otherwise, any land or any estate, term, or interest therein, or any easement, power, or privilege in, through, under, or over the same, and may from time to time sell, lease, exchange, or otherwise dispose of all lands, easements, powers, or privileges so acquired by them and not wanted for the said purposes.

13. By s. 38, the appellants were authorized to take from every occupier of a mine, certain royalties in respect

of each ton of minerals raised or got from such mine, "provided always that no occupier shall be liable to pay such royalties unless and until the mine of such occupier has been drained by means of the works constructed or acquired by the company." . . .

15. By s. 42, "the occupier of every mine is hereby authorized and required to pay the amount of the royalties authorized to be levied by the company, and to deduct so much of the same as is specified in Sched. C. [viz., five shillings for every ton of lead raised] out of any rent or royalty due to the owner of such mine [and every occupier making such payment shall be acquitted and discharged *pro tanto*, &c.]."

16. By a deed dated December 14, 1882, . . . the Duke of Westminster granted to the company (*inter alia*):—

(i.) All such easements in and through, and right of drainage through, and other and exclusive rights of using (but subject, and except, and reserving as thereafter mentioned) the Halkyn Deep Level as might be necessary or convenient for the purposes of the said Act, or of the said company's undertaking, with power from time to time to uphold, maintain, cleanse, repair, scour, deepen, widen, straighten, alter, enlarge, divert, and improve the said level when and to such extent as might be necessary or convenient for the purposes of the said Act, or the said undertaking.

(ii.) All such easements in, and over, and right of drainage through, or by means of, and other and exclusive rights of using (subject, &c. as thereafter mentioned), the open cut or watercourse . . . and the banks and beds thereof, as might be necessary or convenient for the purposes of the said Act or undertaking, with similar powers from time to time to maintain, repair, enlarge, divert, and improve.

(iii.) [Power to make tunnels, works, &c.].

Except and reserving unto the Duke and his lessees "all lead, lead ore, and blende which, in making or extending the said tunnels or works, should be found or gotten.

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“And also except and reserving unto the Duke, his lessees, and others by him or them authorized to use the Halkyn Deep Level and the tunnels to be made as aforesaid for searching for and working the mines and beds of lead, lead ore, and blende which could conveniently be sought for, obtained, and gotten by communications with, or otherwise by means of the said Halkyn Deep Level and tunnels, and for removing through, or by means of the said Deep Level and tunnels and any shafts, &c. in use by the said company, all lead, lead ore, and blende which might be so gotten, and all *débris* convenient to be removed. . . .

“Provided always, and it was thereby agreed and declared, that the rights under the exceptions and reservations thereinbefore contained should not be used or exercised so as to obstruct, hinder, delay, or interfere with the prosecution by the said company of any works or operations of the said company, under the authority of the said deed, or for the purposes of the said Act, or of the said company's undertaking, or to the damage, injury, or prejudice of the said levels, tunnels and shafts, or any other works of the said company, or so as to obstruct or interfere with the free flow of water.”

18. . . . The appellant company deepened the said open cut . . . and they built up the sides thereof to prevent the loose ground of the hill-side from slipping into it, and they substantially and permanently repaired the tunnel. . . . In carrying out the said works, they placed in the said tunnel a quantity of iron tubbing of oval shape, about five feet high, and as to part thereof, arched the same over with firebricks, and in other ways supported the roof thereof.

19. [Part of the tunnel is used only for the flow of water. Along part of it, the Halkyn Mining Company have laid a tramway above the water-level under the powers reserved by the deed, and use the same for hauling materials and the passage of their workmen. In this part, the same mining company have also placed air-pipes, used for ventilation and working rock-drills, and they also exercise their

powers of working for and getting ores by mining operations through the roof and sides of the tunnel, and have, under the control of the appellants, exercised their right of getting lead from the roof of the tunnel while the tunnel was being driven.]

23. [The appellants from time to time repair the tunnels and the supports of the roof thereof.]

24. The appellants have spent in constructing and repairing tunnels, and in widening and repairing shafts, 35,450*l*.

25. The water passing along the said tunnels proceeds solely from the mines, and it flows through the tunnels by gravitation.

28. The appellant company have not purchased or otherwise acquired any right to the soil of any part of the said tunnels, levels, open cut or shafts, and have no rights therein or thereto, save such as are conferred by the said Act of Parliament and the said deed. They make no payments to any one in respect of such rights in the shape of rent or otherwise, and they receive no moneys in respect thereof, save the sums to which they are entitled under the Act of Parliament.

30. . . . The appellant company for many years paid no dividend; in 1890 a dividend of 14 per cent. was paid, and, in 1891, a dividend of 10 per cent., and the average dividend paid from the formation of the company to the present year is at the rate of 3½ per cent.

No question of amount was raised, the only point in dispute being whether the appellants were rateable or not.

Bosanquet, Q.C., and *F. Marshall* for the appellants: The appellants have not the exclusive use of the tunnel and watercourse, and are not rateable. They have merely an incorporeal right. The land or soil has not been purchased, and is not vested in the appellants under the grant. Ownership draws with it the occupation, unless the occupation is by some means vested in a person other

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than the owner. At one time the duke (or his predecessor) was both owner and occupier; the mining lease vested the occupation in the mining company, and it is vested in that company still. The only user by the appellants is the act of permitting water to flow down the tunnel; that user does not amount to occupation, and the fact that it is an exclusive user carries the matter no further. The appellants have no property in the water, and the tunnel is therefore distinguishable from the pipes belonging to a gas or water company. In *Metropolitan Ry. Co. v. Fowler*, [1892] 1 Q. B. 165, the Court of Appeal held that a tunnel under a public street containing an underground railway was a hereditament, and liable to land tax; but in that case the railway company had the exclusive occupation of the tunnel, their rails permanently occupied the bed of it, and the walls consisted of brickwork four or five feet thick. In the present case the mining company use the tunnel for their own purposes; they may cut through the side to work ore at a distance from the tunnel, and there are no such walls, as in *Metropolitan Ry. Co. v. Fowler*. [COLLINS, J.: Is that material? Suppose the railway tunnel had been cut through rock, needing no brickwork, would it have made any difference?] The payments made to the appellants are not measured by the amount of water which flows through the tunnel. The meritorious cause is the having drained the mines. Suppose no water flowed, the royalty would still be payable to the appellants.

Balfour Browne, Q.C. (*E. H. Lloyd* with him), for the respondents: The use of the word "easement" in the special Act and the deed is immaterial if more than an easement is created. The power to alter, straighten, and divert the tunnel involves more than a mere easement. The tunnel is like the artificial channels made in rendering a river navigable, and not like the natural river bed: see the decision of the Queen's Bench Division in *Manchester*,

Sheffield & Lincolnshire Ry. v. Doncaster Union, *supra*, p. 318. It was there held that exclusive occupation for one purpose is sufficient to create rateability; and the appellants have such an occupation. This case is governed by *Metropolitan Ry. Co. v. Fowler*, [1892] 1 Q. B. 165. The railway company had power to "appropriate and use" the subsoil, but not the land; they wanted, as do the present appellants, the space which the subsoil occupied, and not the subsoil. If the appellants have merely an easement, the reservation of the land, &c. to the duke is unnecessary. The exercise of the mining lessee's rights is made subject to the user as a tunnel. In *Bevan v. London Portland Cement Co.*, [1892] W. N. p. 151, the owner of chalk pits made a tunnel twelve feet wide and twelve feet high, running for 100 yards under a highway; it was bricked at each end and for part of its length, and was used to carry chalk in trucks on rails. It was held that the tunnel was not an easement but a hereditament. In *Talargoch Lead Mining Co. v. Guardians of St. Asaph* [1868], L. R. 3 Q. B. 478, the appellants, for the purpose of working machinery connected with a lead mine, diverted a stream, paying for the occupation of land by the watercourse, which was partly open, partly tunnelled, and for about 350 yards in pipes; at that date a lead mine was not rateable, but the appellants were held rateable in respect of the watercourse. *Reilly v. Booth* [1890], 44 Ch. D. 12, shows that there may be ownership of space, as well as of soil.

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COLLINS, J.: I have been asked to give judgment first in this case. The question which we have to decide is purely one of fact, for there is no dispute upon any point of law, and it is admitted that in order to create rateability there must be shown to be exclusive occupation. The whole question in this case, therefore, is whether or not there is exclusive occupation of a hereditament. I am of opinion that exclusive occupation of the tunnel and cutting in question by the appellants has been shown. When one

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looks at the deed—the grant, the exceptions, and the reservations—it is beyond all question that more than a mere right of passage or access has been conferred upon the appellants. Where you have a mere right of passage not involving occupation—not involving the permanent user of land—then it is not rateable; but where you have an exclusive right which permits and obliges permanent occupation, then it becomes rateable. Here the grantees of the right have the duty and power of making tunnels, of repairing, widening, and diverting them, for the purpose of draining the mines. They have chosen their own methods of doing the work: for some part of the length, the tunnel consists in effect of a metal tube; this clearly amounts to a physical occupation of the soil, which is rateable. In other parts they have used brickwork. In my opinion, they have in these works given conclusive evidence that the rights given to them involved an occupation of the soil. On principle and on common sense, this is enough to decide this case. But the case cited by Mr. Balfour Browne (*Talargoch Mining Co. v. St. Asaph Union* [1868], L. R. 3 Q. B. 478), that an artificial watercourse, partly open and partly covered, is rateable, is conclusive as to the open watercourse. And where one finds another part of the subject-matter, used in a very similar way, by making an artificial watercourse, either by bricks or tubes, the whole may be treated as standing in the same category, and subject to the same user, and this affords evidence, practically conclusive, of a right to occupy, carried out by occupation through the whole subject-matter. It is therefore abundantly clear that here there is sufficient exclusive occupation, enough to render the appellants rateable.

The cases most pressed upon us were those relating to the rating of canals—*R. v. Mersey and Irwell Navigation*, 9 B. & C. 95; *R. v. Thomas*, 9 B. & C. 114; *R. v. Aire and Calder Navigation*, 9 B. & C. 820. But those cases stand on a footing of their own, and are entirely distinguishable from this case. The question there was whether

that part of a canalized river which consisted of the ancient river bed, as distinguished from that part of the canal proper which consisted of new cuttings, was rateable, and the companies were held not rateable in respect of the old river bed, on the ground that they had merely rights and duties connected with land covered by water which was a public highway. It was held that their rights, which were measured by statute, did not amount to more than a mere easement. But where you have a right, which to a considerable extent consists of an easement, coupled with a right of exclusive occupation, though only for limited purposes, then rateability attaches. Take, for example, the case of tramways in a street, the public have the user of the rails by passing over them, but they are occupied by the company for special purposes with special exclusive rights, and are therefore rateable. So, too, in the case decided as to telephone wires, both here and in the Court of Appeal—*Lancashire Telephone Co. v. Overseers of Manchester*, 13 Q. B. D. 700; 14 Q. B. D. 267—the wires were attached to chimneys by permission of the occupiers of the houses. The chimneys for general purposes were occupied by the occupiers of the houses, but the Telephone Company had an exclusive right to an occupation for a particular purpose. It was held that though the general occupation was in the occupier of the houses, there was an occupation, exclusive for certain limited purposes, in the Telephone Company, and that consequently they were rateable. No case has been cited for the appellants which is not clearly distinguishable from this case, and in my opinion the line has been passed which distinguishes a mere easement or right of passage or access from the dominion over and occupation of the soil. The appellants are therefore rateable.

MATHEW, J.: I am of the same opinion and for the same reasons.

Appeal dismissed with costs (a).

(a) An appeal against this decision was entered, but had not been heard at the time of going to press.

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HULL DOCKS COMPANY v. THE GUARDIANS OF THE
SCULCOATES UNION.—
1893.June 12, 13.*Docks—Parochial Earnings and Acreage Principles—Wharfage Dues
—Railways—Absence of Tolls.*

The Hull Docks Company were the owners of several docks made at different times under different Acts of Parliament. Some of the docks communicated with each other; and they extended into several parishes. Every vessel paid a single toll, and she was entitled to go into any of the docks to discharge cargo, and to load in the same or any other dock. The tolls varied according to the port from which or for which the vessel sailed, and not according to the dock which she entered. Some of the docks were, in practice, appropriated to vessels engaged in a particular trade.

Held, that the rateable value of the docks which communicated with each other must be divided in proportion to the acreage of the water area of each dock; but that the docks which did not so communicate must be separately rated.

R. v. Hull Docks Co. [1852], 18 Q. B. 325, distinguished.

The appellants charged wharfage dues for goods landed at wharves, or loaded from the wharves on board ship.

Semle, such wharfage dues are analogous to warehouse rents, and must be taken into account in rating the wharf where they are earned.

On the appellants' property were certain railways, in respect of which the appellants were prohibited by statute from charging tolls. The North Eastern Ry. Co. used the railways as a means of access to the docks, but refused to pay the appellants more than 350*l.* per annum, payable under a special contract for the construction of part of the railways. It was found as a fact that a tenant could be found who would pay more than 350*l.* a year for the railways if the appellants could legally exact such a rent.

Held, that in rating the appellants the railways could not be assessed at more than they produced to the appellants.

SPECIAL case stated by an arbitrator, to whom had been referred appeals to the quarter sessions for the borough of Kingston-upon-Hull relating to rates made for four parishes in the Sculcoates Union, viz., Sculcoates, Newington, Drypool, and Garrison Side.

In *R. v. Hull Docks Co.* [1852], 18 Q. B. 325, it was

held that in rating certain docks at Kingston-upon-Hull (viz., the Queen's Dock (then called the Old Dock), the Humber Dock, the Junction Dock, the Railway Dock, and the Victoria Dock), the assessment was to be based not upon the actual receipts in each parish, but in proportion to the acreage of water area in each parish; that an assessment on the acreage principle was in the circumstances unavoidable, but that an assessment on the basis of parochial earnings was preferable where the nature of the case permitted it.

The present appeals related (*inter alia*) to the Queen's Dock, the Victoria Dock and the St. Andrew's Dock; the last-mentioned dock had, together with other docks, been built since 1852, the date of the decision in *R. v. Hull Docks Co.* The main question to be decided in these appeals was, whether the whole of the docks at Kingston-upon-Hull were to be assessed upon the principle adopted in that case.

The following are the material facts stated by the arbitrator in the special case:—

10. The Queen's Dock, Prince's Dock, Humber Dock, and Railway Dock, communicate directly with each other, and with the river Humber, and also, by means of crossing the river Hull, with the Drypool Basin and the Victoria Dock. The Albert Dock and the Sir William Wright Dock communicate with each other, but with no other dock, save by means of vessels from the said docks passing out into the river Humber. The St. Andrew's Dock communicates with none of the other docks except by way of the river Humber.

11. The St. Andrew's Dock is used almost exclusively for fishing vessels. A platform has been erected on the north side with special fittings and conveniences for the unloading, &c., of fish, with offices, &c. . . .

12. At the Victoria Dock the trade is almost entirely in timber, for which special facilities have been provided. . . . There is scarcely any timber export trade.

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13. The Queen's Dock, so far as it lies in Sculcoates parish, is also mainly a timber dock.

14. The tonnage rates or dock dues payable on vessels using the company's docks are charged in the following way. A ship entering any dock and there discharging, pays dock dues upon her net registered tonnage, according to the port from which she comes, and a ship loading at any dock pays dock dues upon her registered tonnage, according to the port for which she clears; but no ship has to pay dues for both the outward and inward voyage, and each vessel therefore pays only the higher of the two sets of dues, whether outgoing or incoming, for which she is liable.

15. The dues are all collected at the Custom House. The payment of one set of dock dues entitles a vessel to the use of any of the docks, though for reasons of convenience to both the shipowners and the dock company, particular docks are in practice used by particular trades. A fishing vessel, for instance, which in the ordinary course would go to St. Andrew's Dock, could, if her owner or master thought fit, go to the Albert Dock, and would pay precisely the same dock dues as if it went to St. Andrew's Dock.

16. The removal of vessels from one dock to another, while staying in port, takes place chiefly when, having discharged a cargo of one description, they proceed to another dock for the purpose of loading a cargo of a different kind. Vessels bringing timber to the Victoria or Queen's Dock, for instance, frequently take back coal, and go to the Albert or some other dock to load. . . .

17. A record is kept of all the vessels entering the docks, and of the particular docks in which they respectively discharge and load, from which the appellants were able to compile lists of the vessels discharging and loading in each of the three docks in the respondent parishes, and, with comparatively few exceptions, to say in what parts of those docks parochially they were so discharged or loaded.

[The appellants, before the arbitrator, prepared separate accounts for each parish; they credited the dock dues to the dock in which each vessel discharged; or where a vessel discharged in one dock, and loaded elsewhere, one-half of the dues was credited to such dock. Wharfage dues (*i.e.*, the charge made for goods landed on or loaded from wharves) were credited to the parish in which the wharf was situated. Some of the expenditure was divided by the appellants in proportion to the gross receipts in each parish, and some was debited to the particular parish in which it was incurred.]

33. [The respondents before the arbitrator, calculated first the rateable value of the entire estate of the appellants, and deducted therefrom] the rateable value of all the warehouses, dock offices, graving docks, sheds, yards, and cattle depôt on the appellants' estate, as being indirectly productive, taking the remainder as representing the rateable value of the docks only, and this remainder they allocated to each parish in proportion to the water area of the docks and basins in that parish.

35. On various parts of the Hull Dock estate are a number of railway and tramway lines belonging wholly or jointly to the appellants, which have been used by the North Eastern Railway Company for several years, and continue to be so used for the passing of traffic between the docks and their railway system. The North Eastern is the only railway system having access to the docks. For such uses the North Eastern Railway Company paid the appellants 5,000*l.* a year in each of the five years ending December, 1890. In the year 1891, although the user continued the same as before, they only paid 350*l.*, which was paid for the use of certain lines laid under special agreement, wholly in the parish of Garrison Side, and which sum of 350*l.* has been included in the appellants' receipts for arriving at the rateable value of the appellants' property in that parish. In the Parliamentary Session of 1892, and again in 1893, a bill was introduced

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by the North Eastern Railway Company for the purchase of the whole undertaking of the appellants.

[Contentions by appellants and respondents that their respective methods of calculating rateable value were correct.]

38. It was further contended for the respondents that the rent which a tenant might be reasonably expected to give for the whole of the railway and tramway lines used by the North Eastern Ry. Co. in the respondent parishes ought to be taken into consideration in determining the rateable value of the appellants' property therein; having regard to the fact that the said company paid a rent for the same until the end of the year 1890, and discontinued such payment only when introducing a bill for amalgamation into Parliament; and further, because the appellants have to bear the expense of repairing and maintaining the said lines, which expense is one of the outgoings included in the valuation of the appellants' property for rating purposes.

39. For the appellants it was contended that such rent ought to be excluded from consideration in determining such rateable value save as to the 350*l.* which the North Eastern Co. still pay, because, by s. 53 of 24 & 25 Vict. c. lxxix., no tolls are to be taken by the appellants for the use of the lines, and because no rent was, in fact, paid in the year immediately preceding the making of the rates which are the subject of appeal, or have been paid since December, 1890.

40. With reference to this contention, I find, as a fact, that the North Eastern Ry. Co., or some other tenant, could be found who would pay a rent for the said lines beyond the said 350*l.* a year, if such rent can be legally exacted by the appellants in view of the section referred to.

[The arbitrator found alternative findings of value:— (1) assuming that the respondents' contentions were correct, whether they were right or wrong as to the rateable value of the railways and tram lines; (2) assuming that

the appellants' contentions were correct altogether; and (3) assuming that they were correct except as to the railways and tram lines.]

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Bosanquet, Q.C. (*Marchant* with him), for the appellants: Wharfage dues were not considered in *R. v. Hull Docks Co.* [1852], 18 Q. B. 325, and it is impossible to deal with them on the acreage principle of apportionment. In *Mersey Docks v. Overseers of Liverpool* [1872], L. R. 7 Q. B. 643, it was held that the docks on both sides of the river Mersey, which by statute constituted one estate under one management, could not be treated as one system of docks, but that the earnings and outgoings of each set must be kept distinct, although a vessel having paid certain rates could use any of the docks on either side. And Cockburn, C.J., said (*Ib.* at p. 650):—"The acreage system is an objectionable one, and only to be resorted to in case of necessity." There is no necessity in the present case, as the accounts for each dock are kept sufficiently distinct. As to the railways:—it seems that under the statutes the railway company cannot be compelled to pay the 5,000*l.* a year. All the indirect benefit received by the appellants is already rated in their receipts from the docks. It cannot be right to rate them there in respect of the indirect profits, and in respect of the railways on account of tolls which, by statute, they may not charge.

Balfour Browne, Q.C., and *R. C. Glen*, for the respondents: Wharfage dues are earned by carrying goods from ships to the land or *vice versâ*: to earn the dues water is as necessary as land. Some goods are discharged into lighters, and the wharfage dues are charged where the goods are landed, which may be in another dock. It cannot be right to allocate the dues to the wharf alone; for it may be that the front of the wharf is the boundary of a parish, in which case the parish in which the ship lies will get nothing. These dues are like terminals, which in rail-

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way rating are always spread over the whole line. [MATHEW, J.: Surely the wharfage dues are closely analogous to warehouse rents?] Warehouses must be separately rated, because they are capable of separate beneficial occupation (*Mersey Docks v. Birkenhead* [1873], L. R. 8 Q. B. 445): but if the wharves were separately occupied, the wharfinger not having the occupation of the docks would not be able to secure the existing traffic, and *non constat* that he would earn the wharfage dues now received. The experience of the past would be no criterion of the future. [WRIGHT, J.: The decision in *R. v. Hull Docks Co.* is based on the fact that all the docks communicated with each other, and were in effect one dock and used as one concern. The new docks do not communicate with each other, and one is now appropriated to one trade, and one to another.] The principle of that decision applied to the Victoria Dock, which could then (and can still) be entered from the other docks only by crossing the river Hull; and to enter the new docks, ships must go out into the Humber. This difference must be immaterial. In *Mersey Docks v. Liverpool* [1872], L. R. 7 Q. B. 643, it was assumed that the two sets of docks constituted two separate rateable hereditaments.

[In the course of the argument it was pointed out that the findings as to value were not sufficient if the Court should be of opinion that none of the contentions put forward by the parties were correct.]

MATHEW, J.: In this case we are clearly of opinion that the rate is bad, and that the case must go back to the arbitrator. The principle of *R. v. Hull Docks Co.* [1852], 18 Q. B. 325, applies to all the docks which were dealt with in that case. But the Victoria Dock was not then completed, and its present position is said to be distinguishable. The arbitrator should take into account the special circumstances. Two other docks created since 1852 [*viz.*, the Albert Dock and the Sir William Wright Dock], are

in communication with each other, and to them the principle of *R. v. Hull Docks Co.* must be applied. The St. Andrew's Dock must be assessed separately. The railway cannot be assessed for more than it produces to the appellants. With these directions, the case must be remitted generally to the arbitrator, who will deal with the costs of this application.

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WRIGHT, J., concurred.

Case remitted (a).

MAYOR, ALDERMEN AND BURGESSES OF SOUTHPORT v.
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Q. B. D.
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July 10.

Gas Pipes—Use of, for the Supply of Gas—Occupation or Easement.

The borough of Southport adjoined the township of Birkdale. The corporation of Southport were the owners of gasworks situated in the borough, and the local board of Birkdale were the owners of gas pipes and mains within the township; and by a local Act the local board were given the exclusive right of laying pipes, &c. within their township, and were bound for ever to keep the existing and future pipes, &c. in good repair and condition, and to afford the use thereof to the corporation of Southport for the supply of gas within the township of Birkdale in consideration of certain payments.

Held, that the local board of Birkdale, and not the corporation of Southport, were the occupiers of the pipes, &c. within the township of Birkdale.

APPEAL relating to the assessment of certain gas mains and pipes which were the property of, and had been laid down by, the local board for the township of Birkdale, and were situated within the said township, in the Ormskirk Union.

The borough of Southport adjoins the township of Birkdale, and the gasworks which supply the mains and pipes in question are situated in the borough of Southport, and are the property of the corporation of that borough.

(a) An appeal against this decision was entered, but had not been heard at the time of going to press.

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The Southport Improvement Act, 1871 (34 & 35 Vict. c. cxl.), s. 43, enacts as follows:—

“The local board [for the township of Birkdale] shall have the exclusive right, *except as hereinafter provided* (a), of laying gas mains and pipes within the township, and shall for ever hereafter keep their present and future gas mains and the public lamps in the township in good repair and condition, and shall afford the corporation [of Southport] the use of the same for the supply of gas for public and private purposes within the township, and in consideration thereof the corporation shall pay to the local board $4\frac{1}{2}d.$ for every 1,000 cubic feet of gas supplied by the corporation to private consumers within the township; and in consideration of the power conferred by this Act upon the corporation to supply gas within the township, the corporation shall also pay to the local board $3\frac{1}{2}d.$ for every 1,000 cubic feet of gas supplied by the corporation within the township to private consumers, such respective payments to be made quarterly.”

The appellants contended that they were not in occupation of the mains and pipes, and were therefore not rateable.

J. F. Leese, Q.C. (*S. T. Evans* with him), for the appellants: The Southport Improvement Act, 1871, s. 3, incorporates the Gasworks Clauses Act, 1847: “provided that clauses 6—12 of that Act shall be put in force within the township of Birkdale by the Birkdale Local Board only, and not by the corporation, and the word ‘undertakers’ in clauses 6—12, and 19—29 shall, so far as such clauses affect the township of Birkdale, apply to and mean the

(a) The words in italics seem to refer to s. 46, by which, if the mains in the township of Birkdale become insufficient for the supply of gas in the districts beyond the township, power is given to the corporation of Southport, at their own expense, and subject to the inspection, &c. of the local board of Birkdale, to replace the mains by larger and sufficient mains, which new mains are to become the property of, and to be repaired by, the local board. Nothing in the arguments, however, turned on this provision.

Birkdale Local Board and not the Corporation." By ss. 6—12 of the Act of 1847 the "undertakers" have power to lay down and alter pipes, and are liable to a penalty for delay in reinstating streets, &c.; and by ss. 19—29 persons damaging the pipes, &c. are liable to pay a penalty to the "undertakers," who are themselves liable to a penalty for allowing gas to escape and pollute any water supply. These are all incidents of occupation. [CAVE, J.: Or of ownership.] If gas were superseded by electricity the appellants' right would be gone. [CAVE, J.: The right would remain, though it might be of no value.] The Act of 1871 does not give the *exclusive* use to the corporation, and if the pipes were in an embankment above ground, the surface might be used, for example, for the exhibition of advertisements. [CAVE, J.: The pipes being underground, the only possible use is to pass gas along them.] In *Smith v. Lambeth Assessment Committee* [1882], 10 Q. B. D. 327, exclusive enjoyment (as distinguished from exclusive possession) of the book-stalls at Waterloo Station was held not sufficient to make Messrs. W. H. Smith & Son rateable. In *Paris & New York Telegraph Co. v. Penzance* [1884], 12 Q. B. D. 552, where the Postmaster-General appropriated special wires to the sole use of a company, the Postmaster-General, and not the company, was held to be the occupier. [WRIGHT, J.: In *Allan v. Liverpool* [1874], L. R. 9 Q. B. 180, it was said that the person rateable is the person who could bring an action if a trespass to the hereditament were committed.]

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A. T. Lawrence for the respondents: The corporation have a profitable occupation by supplying gas through a particular space enveloped in an iron pipe. If the gas were a solid, there would clearly be an occupation by the corporation. In *Smith v. Lambeth*, the railway company had power to move the book-stall to suit their convenience, and Messrs. Smith & Son had no access at night when the station was locked up. The present appellants are in a

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position analogous to that of a tenant of a house, whose landlord does the repairs. Beyond doing repairs, the local board can do nothing with the pipes. The object and meaning of the existence of the pipes is the supply of gas, which is solely vested in the corporation, and their user is distinguishable from that of an ordinary trading company only by the fact that the local board do the repairs. In *Allan v. Liverpool* [1874], L. R. 9 Q. B. 180, the sheds in question were held not to be "let" because the Mersey Docks Board had the right to put other goods in them. All phrases must be construed with reference to the subject-matter to be rated, and to "afford the use" of underground pipes "for the supply of gas" is equivalent to giving the entire occupation.

J. F. Leese, Q.C., in reply: The subject-matter of rating is not gas, but the pipes. The words "for ever" in s. 43 of the Act of 1871, if it applies to the words "shall afford the use," either give the ownership in fee or an easement, because no lease "for ever" is possible in law.

Cur. adv. vult.

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CAVE, J.: The question in this case is whether the corporation of Southport are rateable in respect of an alleged occupation by them of certain pipes used to supply gas to the township of Birkdale, under s. 43 of the Southport Improvement Act, 1871. On that section the question arises, whether the corporation are the occupiers or not. Now, it is obvious that the local board of Birkdale are the owners of the pipes; they have the exclusive right of laying them down, and they have to keep them in repair. *Primâ facie*, as owners they are entitled to the occupation; they may, of course, part with the occupation for a limited time, and the question arises whether, under the Act of 1871, the owners have parted with the occupation, so as to make the corporation the occupiers. A

number of cases were cited to us, and one has to be on one's guard against allowing too much weight to the cases, and too little weight to the principle underlying the cases. *Primâ facie*, the owner is the occupier, though the owner may divest himself of his occupation. He who has both ownership and occupation possesses all rights over the property. If the owner lets it, he divests himself of some rights for a certain time; if he grants a right of way, he divests himself of certain limited rights. The cases turn upon this distinction, that where a person who is both owner and occupier grants to another certain limited rights, reserving to himself all other rights, he retains the occupation, but where he grants his rights generally, though but for a limited time, and reserves to himself only some of those rights, then he ceases to be the occupier. Suppose I grant to one man a right of way, and to another a right of watercourse, in neither case do I cease to be the occupier, because the persons to whom I make the grants are grantees of certain limited rights only. But if I grant all my general rights, reserving to myself only the right to enter at reasonable times to see the state of repair, then I part with the occupation. The recognition of this principle reduces the cases to order, and makes them easily intelligible. Now let us apply the principle to this case: The local board of Birkdale are the owners of these pipes, and they have, or rather, the Act of 1871 has, granted to the corporation of Southport the use of the pipes for the supply of gas, but has not given the use of the pipes to the corporation generally. All that is taken from the local board is the use of the pipes for the supply of gas. The question is rendered more difficult in this case, because the use of the pipes for the supply of gas is *primâ facie* the only use contemplated. But when a man takes in cattle, he may take in as many as the land will feed, and no other use of the land may be contemplated, yet the person taking in the cattle remains the occupier. The rights of the corporation are strictly

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limited to the use of the pipes for the delivery of gas; the local board are bound to do all repairs, and they may alter the direction and position of the pipes, if they are found to be too near the surface. No definite portion of land is vested in the corporation, whose rights are strictly limited and defined, and therefore, in my opinion, the corporation are not the occupiers.

WRIGHT, J.: I am of the same opinion. In cases of this kind, the substance of the thing must be looked at. In the *Aldershot Gas Works Case* (see *R. v. Stevens* [1865], 12 L. T. N. S. 491), although the contract with the Crown, under which the gas was made, expressly provided that it was not to be a lease, but was to be a licence only, the persons licensed were, notwithstanding, held to be the occupiers. In the present case, the local board of Birkdale have taken the greatest pains to prevent a foreign body from being occupiers of these pipes. The local board are the only persons who could maintain an action for trespass, and they have to do all the repairs to the pipes.

Appeal allowed (a).



Q. B. D. R. v. THE JUSTICES OF LONDON AND THE LONDON COUNTY

COUNCIL.

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May 15, 16.

Prohibition—Times for Proceedings—Directory or Imperative—Appeal against Totals—Valuation (Metropolis) Act, 1869, ss. 20, 32, 42 (13)—Practice—Costs.

The London County Council, in January, 1891, duly entered an appeal to the London Quarter Sessions against the totals for the parish of St. George, Hanover Square, on the ground that over 3,000 hereditaments in that parish were under-valued. Owing to the large number of appeals entered at the same sessions, it was

(a) This decision was affirmed by the Court of Appeal: *vide infra*, p. 438.

impossible for the Court to hear all of them before March 31, 1891, the time fixed by the Valuation (Metropolis) Act, 1869. The respondents moved for a prohibition against further proceeding with the appeal after that day.

Held, by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the provisions of the Valuation (Metropolis) Act, 1869, s. 42 (13), as to time, were imperative in the sense that they bound the justices to sit in the prescribed time; but not so as to take away the right of appeal from persons who had entered their appeal in time, if a hearing in the prescribed time was impossible, and that no prohibition could be granted on this ground.

Held further by the Court of Appeal, affirming the decision of the Queen's Bench Division, that the jurisdiction of the London Quarter Sessions and of the assessment sessions was in this respect identical.

But *held* by the Court of Appeal, that the London County Council could not appeal against the totals on the ground of under-valuation of individual hereditaments, except by way of appeal from special sessions.

Seemle, per Kay, L.J., the London County Council cannot be "aggrieved" by the totals of a particular parish within s. 32 of the Valuation (Metropolis) Act, 1869.

Held, by the Queen's Bench Division, that on making a rule for a prohibition absolute the Court has power to give costs.

Wallace v. Allen [1875], L. R. 10 C. P. 607, followed.

RULE *nisi* calling upon the justices for the county of London and the London County Council to show cause why a writ of prohibition should not issue against further proceeding with the hearing of an appeal by the London County Council against the totals for the parish of St. George, Hanover Square, in the quinquennial valuation list made in 1890.

The appellants contended that over 3,000 hereditaments in the parish of St. George, Hanover Square, were under-assessed, and claimed an increase of the totals from 2,200,486*l.* gross and 1,841,761*l.* rateable to 2,460,562*l.* gross and 2,041,895*l.* rateable.

Notice of appeal was duly given on January 14, 1891, but owing to the number of appeals entered against the

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quinquennial lists made in 1890, this appeal could not possibly be heard before March 31, 1891, the date prescribed by the Valuation (Metropolis) Act, 1869, s. 42 (13); and of the 583 appeals entered only 125 were disposed of before that date.

On January 26, 1893, the appeal was set down for argument before the London Quarter Sessions upon the preliminary question whether the jurisdiction of that Court to hear the appeal had expired on March 31, 1891. The quarter sessions held, on the authority of *R. v. Ingall* [1876], 2 Q. B. D. 199; Met. Rat. App. 176, that the statutory provisions as to time were directory only, and not imperative, and that the sessions had jurisdiction to hear the appeal after the expiry of the prescribed time, and formally fixed February 13, 1893, for the hearing. The respondents then obtained this rule upon the following grounds:—

(1.) That the jurisdiction of the quarter sessions to hear the appeal had expired on March 31, 1891.

(2.) That the appellants, the London County Council, were not “aggrieved” by reason of the totals being too low within the meaning of s. 32 of the Valuation (Metropolis) Act, 1869.

(3.) That an appeal against totals, on the ground that individual assessments are too low, will not lie.

The Queen’s Bench Division expressed no opinion upon the second and third questions, and the arguments thereon are omitted.

The following are the material sections of the Valuation (Metropolis) Act, 1869:—

26. . . . The court of general assessment sessions may adjourn from time to time as may be necessary for the performance of their duties under this Act. . . . They shall, with respect to the attendance and examination of witnesses, to the taking of evidence, to the keeping of order in Court, to contempt of Court, to the enforcement of their orders, and to all matters necessary for the exe-

cution of their duties under this Act, have the same jurisdiction and powers, and be in the same position, as a court of quarter sessions, and, subject to the express provisions of this Act, shall conduct their proceedings, be convened, and be in the same position, as near as may be, as if they were a court of quarter sessions.

34. The justices in special sessions and in assessment sessions . . . may adjourn the hearing from time to time and to any day not later than the day before which all appeals to them are required by this Act to be heard; and in the case of assessment sessions for the purpose of obtaining the decision of any superior Court to any day necessary for that purpose. . . .

35. If it appears to the justices in assessment sessions on any appeal that there is no approved valuation list for some parish, they may appoint some proper person . . . to make a valuation list.

36. If any of the parties to the appeal apply to the justices in assessment sessions to direct a valuation of any hereditament with respect to which any appeal may be made . . . the Court may, in their discretion, appoint some proper person to make such valuation.

37. Where the Court appoint a person to make a valuation list, or a valuation, they may fix some subsequent day, either before or after the day before which all appeals are required by this Act to be heard, for receiving such valuation list or valuation, and may adjourn the hearing to that day.

42. With respect to the times within which proceedings under this Act and the Acts incorporated herewith are to be done, the following provisions shall have effect, (that is to say,) . . .

(12.) Notices of appeals to assessment sessions shall be given on or before the fourteenth of January.

(13.) The justices may hold the assessment sessions at any time after the first of February in the same year, which will enable them to determine all appeals (except

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where a valuation list or valuation is ordered) before the ensuing thirty-first of March.

43. The valuation list, as approved by the assessment committee, and, if altered on any appeal under this Act to any sessions or a superior Court, as so altered, shall come into force at the beginning of the year (commencing on the sixth of April) succeeding that in which it is made, and shall last for five years, subject to any alterations that may be made by any supplemental or provisional list as hereinafter mentioned.

44. Notwithstanding any appeal under this Act which may be pending at the commencement of the year, the valuation list shall come into force unaltered, and every assessment, contribution, rate, and tax, in respect of which the valuation list is conclusive, shall be made, required, levied, and paid in accordance with such valuation list; and where, in consequence of the decision on any appeal under this Act to assessment sessions or a superior court, an alteration in such valuation list is made which alters the amount of the assessment, contribution, rate, or tax levied thereunder, the difference, if too much has been paid, shall be repaid or allowed, and if too little, shall be deemed to be arrears of the assessment, contribution, rate, or tax (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

The Local Government Act, 1888, s. 42 (10), provides as follows:—

The quarter sessions for the county of London shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869, and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area. Upon the hearing of any appeals in relation to property in the city of London, such two members of the court of quarter sessions of the city of London as may be appointed by that court for the purpose shall be entitled to attend and sit as members of the quarter sessions for the county of London.

F. M. White, Q.C., and *H. E. Avory*, for the London County Council, showed cause: First, as to time; the principle of *R. v. Ingall* [1876], 2 Q. B. D. 199; Met. Rat. App. 176, applies. In that case it was held that delay in making, transmitting, and approving a valuation list did not make the list a nullity, and that the provisions of sub-sects. (1), (2), and (8) of s. 42 were directory and not imperative. The reasoning of the decision applies equally to sub-s. (13) of s. 42, which prescribes the time for the holding of the sessions. It is true that, under the Valuation (Metropolis) Act, 1869, s. 24, the justices to form the court of assessment sessions were appointed annually, so that, if appeals were heard after the expiration of the year, they might come before different justices; but any difficulty on this ground is now met by the transfer to the London Quarter Sessions under the Local Government Act, 1888, s. 42 (10). That section repeals great part of the Act of 1869 as to the constitution of the Court, and, inasmuch as the court of quarter sessions has infinitely more work than the assessment sessions (which had no criminal jurisdiction) the provisions as to time cannot be intended to apply any longer. Further, the words of s. 42 (13) of the Valuation (Metropolis) Act, 1869, are not even in form imperative; they direct the justices to make arrangements for hearing within the prescribed time, but they do not forbid from sitting in any event after that time. It cannot have been intended that, if the justices made a mistake in calculating the time necessary for hearing the appeals, some of the appellants should lose their right of appeal. Sect. 44 provides for the case of all outstanding appeals, and there is nothing to limit the provisions of the section to cases in which a valuation list or valuation has been ordered under s. 37, or in which a special case has been stated under s. 40. The whole object of the provisions as to time in s. 42 is to ensure that the appellant shall have an opportunity of appealing against the list; and to hold that sub-s. (13) is imperative will

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deprive the appellant of his right of appeal, and so defeat the very object of the section. Where a statute directs a public duty to be performed, subject to certain provisions as to the manner of performance, those provisions are directory only; but where a statute confers a private right subject to provisions, those provisions are imperative: see Maxwell on the Interpretation of Statutes, ed. of 1875, pp. 330—340. In *R. v. Rochester* [1857], 7 E. & B. 910; 27 L. J. Q. B. 45, 434, it was held that the provisions of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), as to the time for revision of the burgess' list, were directory (a). In *R. v. Leicester* [1827], 7 B. & C. 6, it was held that the provisions of 54 Geo. 3, c. 84, as to the time for holding quarter sessions, were directory only, mainly on the ground that there was in the statute an absence of negative words. The same may be said of the Valuation (Metropolis) Act, 1869. *R. v. Ingall* [1876], 2 Q. B. D. 199; Met. Rat. App. 176, was followed in *Caldow v. Pixell* [1877], 2 C. P. D. 562.

Poland, Q.C., and *Danckwerts*, for the assessment committee of St. George, Hanover Square, in support of the rule: The question whether the provisions are directory or imperative must be determined by balancing the inconvenience which will be caused by adopting either construction. The appellants claim to add 200,000*l.* to the total rateable value of St. George's parish, as entered in the list which came into force on April 6, 1891: if the hearing is now proceeded with, and the appellants succeed, the arrears for several years will have to be made good in one lump sum by the ratepayers of one year (say 1895 or 1896), who will not be the same persons as the ratepayers

(a) This decision was affirmed by the majority of the judges in the Exchequer Chamber: see E. B. & E. 1024. The dissentient judges based their decision, in part, on the ground that a mandamus to revise the list, if issued, would be directed to a newly-elected mayor, who was not in office when the duty of revision should have been performed in the first instance.

who have escaped their just proportion in previous years. It is a general principle of local taxation that the rate-payers of the year should bear the burdens of the year: compare the Poor Law (Payment of Debts) Act, 1859 (22 & 23 Vict. c. 49), s. 1, which directs that parish debts shall be paid within three months after the expiration of each half-year. Under the Valuation (Metropolis) Act, 1869, s. 24, members of the court of assessment sessions were to be appointed annually, and to hold office for twelve months only from November 1st. They remained in office after March 31 only for the purpose of dealing with cases under ss. 36, 37 (*supra*, p. 363), where a valuation or valuation list had been ordered, or where a case had been stated under s. 40. By s. 43, the valuation list is to come into force on April 6th, and by the Local Government Act, 1888, ss. 73, 74, the local financial year is to begin on April 1st, and at the beginning of each year the annual budget of the county council is to be prepared. By sect. 46 of the Valuation (Metropolis) Act, 1869, a supplemental list is to be made before the end of each subsequent year, and this list must be made on the assumption that the list in force at the commencement of the year was correct: see *East and West India Docks v. Poplar Union* [1884], 13 Q. B. D. 364; Met. Rat. App. 355. But if the present appeal be allowed to proceed, there will be a dislocation of the whole scheme of revision of valuation lists. One supplemental list has already been made, and several may have come into force before this appeal can be determined. The result would be a disturbance of every rate calculated on the total since April 6, 1891. Further, by s. 34, the justices "may adjourn the hearing from time to time, and to any day *not later than the day before which all appeals to them are required by this Act to be heard*, and in the case of assessment sessions, for the purpose of obtaining the decision of any superior Court to any day necessary for that purpose." If "negative words" are necessary to render an enactment imperative,

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this section supplies them. Moreover, this section was not before the Court in *R. v. Ingall* [1876], 2 Q. B. D. 199; Met. Rat. App. 176, which dealt only with the earlier proceedings; and in the report in 46 L. J. M. C. at p. 116, Lush, J., is reported to have said: "It is contemplated clearly that all these stages are gone through in time for the justices to hold the sessions, and determine all appeals before March 31, the new year beginning on April 6." The judgment was based on the ground that the right of appeal was not lost, because the appeal could be heard in time. That case, therefore, is in favour of the present applicants for a prohibition. Words not so precise as in the Valuation (Metropolis) Act, 1869, were held to be imperative in *R. v. Belton* [1848], 11 Q. B. 379; and *Bowman v. Blyth* [1856], 7 E. & B. 26. The exception in s. 42 (13) of cases in which a valuation list or a valuation is ordered, is unnecessary if the provisions as to time in that sub-section and s. 34 are not imperative. The provision in s. 44 that the valuation list shall come into force "*notwithstanding any appeal which may be pending*" at the commencement of the year, is satisfied by a reference to the excepted cases in s. 42 (13). Sect. 44 also contains special provision for appeals to a superior Court. All these provisions imply that the statute intended that no ordinary appeals should be undetermined at the beginning of the new financial year.

Cur. adv. vult.

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The judgment of the Court (CHARLES and VAUGHAN WILLIAMS, JJ.) was delivered by CHARLES, J. :—

"In this case the assessment committee of the St. George's Union sought to prohibit the county of London sessions from further proceeding in the matter of an appeal by the London County Council against the valuation list of the parish of St. George, Hanover Square, made and deposited in accordance with the Metropolis Valuation Act,

1869, by the overseers of that parish on or about May 31, 1890, and finally settled by the assessment committee on or about October 29, 1890. The respondents in the appeal were the assessment committee and the surveyor of taxes of the district comprising the parish, but he did not appear. Notice of appeal was given by the London County Council on January 14, 1891, against the valuation list, on the ground that the totals of the rateable and gross values in the parish were too low. Cases were lodged by the county council and the assessment committee in accordance with the practice of the quarter sessions on or before February 1, 1891, but the appeal, owing to the pressure of business in the Court, did not come on to be heard before March 31, 1891. The main contention of the applicants was that on that day the jurisdiction of the Court to hear appeals came to an end by effluxion of time, and whether this contention be well founded or not depends entirely on the construction which ought to be placed on the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67). The jurisdiction formerly exercised under that statute by the assessment sessions has, it is true, been transferred by the Local Government Act, 1888, to the county of London sessions; but they exercise it under the same conditions as those under which it was formerly exercised by the assessment sessions. By s. 32 of the Act of 1869 an appeal against the valuation lists of the various parishes is given to a Court of general assessment sessions to (amongst other persons) any ratepayer in the metropolis and any body of persons authorized by law to levy rates or require contributions payable out of rates if they or he feel aggrieved, by reason (1) of the total of the gross value of any parish being too high or too low; (2) of the total of the rateable value of any parish being too high or too low; or (3) of there being no approved valuation list for some parish. Sect. 24 enacts that the Court shall consist of three justices for Middlesex and two each for Surrey, Kent, and the City of London, and that "the said justices shall be appointed in the month of

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October in every year, or at such other time as may be from time to time fixed by the appointing body. They shall hold office for twelve months, beginning on November 1, and any casual vacancy may be filled up by the appointing body." By s. 26 the Court is given power to adjourn from time to time as may be necessary for the performance of their duties under the Act, and it is provided that they should conduct their proceedings, be convened, and be in the same position as near as might be as if they were a Court of quarter sessions. The justices in assessment sessions had, by s. 35, power to appoint a person to make a valuation list where none has been made by the parish authorities and approved. By s. 36 they could on an appeal direct a valuation to be made of any particular hereditament, and by s. 37 it was enacted that "where the Court appoint a person to make a valuation list or a valuation they may fix some subsequent day either before or after the day before which all appeals are required by this Act to be heard for receiving such valuation list or valuation, and may adjourn the hearing to that day." By s. 40 an appeal on questions of law is given to the superior Court. Sect. 42 enacts, "With respect to the times within which proceedings under this Act and the Acts incorporated herewith are to be done the following provisions shall have effect—that is to say, (13) the justices may hold the assessment sessions at any time after February 1, which will enable them to determine all appeals (except where a valuation list or valuation is ordered) before the ensuing March 31." Other sub-sections appoint dates for the making and deposit of the valuation list, for its transmission to the assessment committee and final approval by them. These last-mentioned provisions were held in *R. v. Ingall* [1876], 2 Q. B. D. 199, to be directory only, but there is nothing in the judgment delivered by Mellor and Lush, JJ., to indicate that they considered all the other sub-sections directory also. On the contrary, we gather from the language used, especially by Lush, J.,

that the Court was of opinion that whilst the particular dates mentioned in the Act for the deposit, transmission, and final approval of the list need not be absolutely adhered to, the whole of the year's appeals must be disposed of before March 31 in each year. There is certainly nothing in this decision to compel us to hold that sub-s. (13) is directory as well as sub-ss. (1), (2), and (8), with which the Court was there dealing; and, although we find in the introductory words of the section a general statement applicable to all the sub-sections—the proceedings are to be done within the times prescribed—it appears to us by no means to follow that in each sub-section the words used must necessarily be construed in the same manner. We must inquire whether in each particular case the words are directory or imperative, and, in order to determine the question, must have regard to the general scheme and other sections of the statute. Now, the scheme of the statute seems to us clearly to point to the valuation list being finally fixed before the commencement of each financial year (*i.e.*, before April 6), except in the two cases where a new valuation list or valuation is ordered, or where a case has been stated for the opinion of the superior Court. Sect. 43 enacts that “the valuation list as approved by the assessment committee, and if altered on any appeal under this Act to any sessions or a superior Court as so altered, shall come into force at the beginning of the year (commencing on April 6) succeeding that in which it is made, and shall last for five years, subject to any alterations that may be made by any supplemental or provisional list as hereinafter mentioned.” A supplemental list is to be made in each of the first four years of the quinquennial period, the first of such periods beginning on April 6, 1871, showing the alterations which have taken place in the previous twelve months, and in each of the last four years the valuation list is to be the original list, together with the new supplemental list (s. 46). A provisional list is provided for by s. 47 to meet the cases of hereditaments reduced or increased

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in value during the course of any year, and when made is to be deemed to form part of the valuation list then in force. By s. 45 the valuation list is made conclusive evidence of the gross and rateable value of the hereditaments included therein for a large number of rates besides the poor-rate, and also for taxes levied under the house tax and income tax Acts. It would be highly inconvenient, in our opinion, having regard to these enactments, to read sub-s. 13 of s. 42 otherwise than as imperative. Unless March 31 in each year is regarded as an absolute limit, an appeal such as that now in question might be heard at any time during the quinquennial period, and even after its expiration, with the possible result of inflicting grave injustice by imposing on the general body of ratepayers of one year the burden of another, a result in direct contravention to the general principle of rating law, that the burdens of each year should be borne by the ratepayers in that year, a principle which forbids a retrospective rate unless specially provided for. And the hearing might in such a case, for example, as the present, be almost indefinitely protracted; for the county council, in support of their contention that the parish total is too low, have challenged upwards of 3,000 individual assessments, all of which the parish propose to defend. The duration of such an inquiry it is impossible to predict, but it is certain that it would be of great length, and the valuation list of the parish would thus remain for months, if not years, in an indeterminate condition. Other sections of the Act, as well as the terms of sub-s. 13 of s. 42 itself, lead to the same conclusion. Thus the power to adjourn the hearing of an appeal given by s. 34 is expressly limited "to any day not later than the day before which all appeals to them are required by this Act to be heard." The same phrase is used in s. 37 above referred to, whereby the Court is set free from the time restriction with regard to receiving a specially prepared valuation list. Sect. 44, indeed, contemplates the possibility of an appeal being

pending at the commencement of a financial year, and provides that, notwithstanding the pendency of such an appeal, the valuation list shall come into force unaltered. But though the words are general they are satisfied by reference to the two cases mentioned in ss. 37 and 40, where there has been a re-valuation ordered, or where an appeal has been made to a superior Court. We may add that the exception introduced into sub-s. 13 of s. 42 is meaningless unless the other words of the sub-section are held to be imperative. It was strongly urged upon us that to adopt this construction will deprive the parties aggrieved of the right of appeal given to them by the Act, and it cannot be denied that our decision will lead to that result. But we must consider the balance of convenience, and weigh against the detriment which may or must arise to individuals, the serious inconvenience and injustice to the ratepayers, which a contrary holding would entail. The question whether the Legislature intends a provision to be imperative or directory must depend in each case on the scope and object of the enactment, and, having regard to the general scheme of the statute and to its express provisions, we have no doubt the Legislature intended, and has sufficiently expressed its intention, that no appeal (with the specified exceptions) should be heard after March 31 in each year. Many decisions on other Acts were referred to, but they furnish us with little, if any, assistance, and do not affect the conclusion at which we have arrived. Two other points were raised by the applicants. They contended that the county council, in their capacity of a "body of persons authorized by law to levy rates or require contributions payable out of rates in the metropolis," had sustained no appealable grievance by reason of the total of the gross and rateable value of a particular parish being too high or too low. In any case their precept for contribution would be satisfied. On the other hand, it was argued that the grievance might be appealable though not pecuniary, and that undue in-

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equality of assessment was in itself a statutory grievance of which the county council could complain. Further, it was contended by the applicants that on an appeal against totals the individual assessments cannot be challenged, but that matters of principle only can be raised, such, for example, as a deduction from gross value in excess of the *maximum* allowed by the Act. (See s. 52, and schedule 3.) To this it was replied that there is nothing in s. 32 to limit the appeal, and that the most effective way of challenging a total is to challenge the constituents of which it is composed. Both these matters are of wide importance, but in the view we take of the question of time it is unnecessary to pronounce any opinion upon them. For the reasons we have given we think that the jurisdiction of the Court to hear this appeal came to an end on March 31, 1891, and therefore make this rule absolute.

The question of costs was reserved for further argument.

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Avory, for the county council, submitted that the Court had no power to give costs.

The Court held that they were bound by *Wallace v. Allen* [1875], L. R. 10 C. P. 607, to hold that they had power.

Rule absolute with costs.

The London County Council appealed to the Court of Appeal.

C. A.

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 August 1.

Bosanquet, Q.C., and *H. E. Avory*, for the appellants;

Sir E. Clarke, Q.C., *Poland*, Q.C., and *Danckwerts*, for *St. George's*, Hanover Square.

[The arguments upon the first ground (*vide supra*, p. 362) upon which the prohibition was moved for, were the same

as in the Court below. The arguments upon the second point are omitted, as the Court of Appeal gave no judgment upon them. The third point was not referred to by counsel for the appellants, and was mentioned merely and not argued by counsel for the respondents.]

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LORD ESHER, M.R.:—In this case, the London County Council had appealed from the assessment committee of St. George's, Hanover Square, against the totals in the list for the parish as being too low, on the ground that a large number of hereditaments were not fairly assessed. It is necessary to consider what the appeal is, and against what it is; and then to go through some of the sections of the Valuation (Metropolis) Act, 1869. The Divisional Court has prohibited the Sessions from further proceeding with the appeal on the ground that the matter has not been finished by March 30th, 1891. By the Valuation (Metropolis) Act, 1869, ss. 6 and 11, the overseers are to make the list, and if any one objects to a wrong valuation of any hereditament, objections may be made before the assessment committee who, by s. 14, shall revise the valuation list within the time mentioned in the Act, and, when the list is finally approved, shall cause the totals to be ascertained and inserted in the list. The values of the several hereditaments are to be added together to make up the totals for each parish. So far the persons who have had to act are the overseers and the assessment committee, but s. 17 brings in a new person, the clerk of the managers of the metropolitan asylums district (now represented by the clerk of the London County Council) who is to cause the totals to be printed. He is to take the two totals, of gross and rateable value, for each parish, to form new totals; to add all the valuation lists together and print the result. By s. 18, special sessions are to be held at the time mentioned in the Act for hearing appeals against the

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valuation lists approved by the assessment committees, and s. 19 says who may appeal, in language which would not include the County Council. By s. 20, the special sessions "shall not hear any appeal touching any part or alter any part of the valuation list except the part relating to the value of an hereditament; and a decision of such justices, and an alteration by them of the value of an hereditament in the valuation list of any parish, shall affect only the rights of the ratepayers of such parish among themselves, and shall not of itself in any way alter the totals of the gross or rateable value of such list as settled by the assessment committee, but may form a reason for an appeal against such totals to the assessment sessions and superior Court as hereinafter mentioned." By s. 23, the Court against whom the prohibition is asked for, is constituted: and s. 26 gives the Court a power of adjournment—not a power of adjournment at large—but "from time to time as may be necessary for the performance of their duties under this Act, and (for the purpose of giving judgment only) from place to place in the metropolis." For some other things, not including the power of adjournment, the Court is made like a Court of quarter sessions. By s. 32, the person who may appeal against the assessment committee is a person aggrieved by a decision on an objection made before them to which he was a party; but a person may appeal from a decision of special sessions whether he was a party or not. By the latter part of s. 32, "any assessment committee in the metropolis, &c. . . . any overseers any ratepayer and any body of persons authorized by law to levy rates or require contributions payable out of rates in the metropolis may appeal to the assessment sessions if they or he feel aggrieved by reason" of the total of any parish being too high or too low. There is no other right of appeal against totals. [His lordship then read s. 34, and s. 42 (10), (13), set out above at p. 363.] Sub-s. (13) is an enactment as to the

time and a description of the time when the sessions may be held. It was impossible to put in a date at which the *last* sessions were to be held; they cannot be held before February 1st, and the limit of the period at the other end is a descriptive one. Looking at those words which are under a general heading ("Times for Proceedings"), and which are descriptive of time when the justices may hold the sessions; and looking at the object of the provisions as to time (*viz.*, that the list, which is to govern several taxes as well as rates, should be completed before March 31st); it seems to me that it cannot be said that the words are directory merely; I think they are imperative, and that a limit of time has been imperatively enacted by statute. But against whom is it so enacted? The justices are the persons to administer the law; and if the parties who appeal obey the statute, and enter their appeals at a time which would enable the Court to hear them; and if the only reason why they are not heard in time is that by some accident or misfortune of the Court, the Court is unable to do so: is it to be said that by the inability of the Court, and by no default of the parties, the right of appeal is lost? This extraordinary glut of business could not be obviated or calculated upon. I think the enactment must be so read as not to be made absurd, and if the parties have obeyed the Act, by entering their appeals in time to enable the Court to hear them, the inability of the Court ought not to be brought into play as against the parties who have put down their appeals in time. The question then arises whether *this* appeal could be heard in the prescribed time. Long, complicated, and enormous as it is, we cannot say that it could not possibly be heard in the time; and if it is prevented from being heard only by the difficulties of the Court, that is no ground for a prohibition. But what is the nature of the appeal? It seems to me to pretend one thing and to be another. It is said to be an appeal against totals. If it is really so, how can a total be wrong? It can be

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wrong as mere arithmetic, or it may be wrong if one parish is left out altogether. But this appeal would be lost the moment it was launched. It is not suggested that the valuation list of any parish is left out. The appellants object not to the totals as totals, but on the ground that individual hereditaments are under-assessed. It is clear, beyond all doubt, that this appeal is not against totals, but is based on the ground of the wrong assessment of individual hereditaments. That appeal should be brought to special sessions; and then, after a decision by special sessions, an appeal may be brought to assessment sessions. A person may appeal from special sessions, whether he was a party to that decision or not: see s. 32. The County Council have tried to avoid the necessity of an appeal to special sessions, to which appeal they could not be parties, and they try to bring before the assessment sessions a question which neither the London County Council, nor anybody else, could take there. If anybody else could, that would not be a case for prohibition; but if no one could appeal, the assessment sessions have no jurisdiction to hear any such appeal. This is really an appeal against the valuation of individual hereditaments, and it is not one which the London County Council have a right to bring; no one could bring such an appeal as this, and there is no jurisdiction to hear it, whether brought by the County Council or any one else. I have only gone into the question as to time in order to assist the sessions, and in order to aid parties to other appeals, who have done everything they can, and whose cases were not heard merely by the inability of the Court. This prohibition must go.

BOWEN, L. J.: The first ground on which this prohibition was asked for (as to time) affects other persons besides the London County Council; the other grounds affect the London County Council only. It is obvious that the first ground has far-reaching consequences, and it

becomes necessary to consider the sections which limit the times for sittings. The quarter sessions, which replaces the assessment sessions, inherit only the jurisdiction which belonged to the assessment sessions. We may, therefore, go back to the Valuation (Metropolis) Act, 1869. That Act prescribes limits of times; the sessions are to sit after February 1st, and are not intended to sit after March 31st. That period was intended to suffice. Now, are these sections which prescribe the termini, merely counsels of perfection, so that, if things are not done in the prescribed time, it does not much matter? Or, to take the other extreme view, do they mean that the limit of time is rigid, and goes to jurisdiction, so that at midnight on March 31st, the Court expires, and all subsequent proceedings are *coram non judice*? In my opinion the truth lies between the two, and there is no such exact division of Acts into directory and imperative Acts, as to be a categorical division which exhausts all cases. The best rule, in fact, the only rule, for the construction of a statute is to try to find out what the Act means. Now it is certain that time is of the essence of the Act. It is necessary that appeals should not be entered before a given date, and it is essential for the purposes of rating and taxation that March 31st should be the limit of the sittings. It makes a great difference whether the prescribed termini are observed or not. As regards the sessions and *their* action, the sections are imperative: they bind the will of the sessions. But it is a general rule that if there are two possible interpretations to be put upon a statute, one ought not to adopt that interpretation which leads to injustice. Here is a broad system of metropolitan rating: ministerial officers are to put values upon the several hereditaments. In a free country it is the very essence of such a system that there should be an appeal from those officers. If it were not so this would be no country to live in. Then the Act says the Court shall sit to hear appeals between February 1st and March 31st. Is it conceivable that a person

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grossly under-rated is to lose his right of appeal on March 31st merely because the fatal hour has struck, and that he is to be relegated to the tender mercies of the parish officers? Reason and good sense drive one to say no. The language of the Act was no doubt intended to be imperative as regards the voluntary action of the Court. But suppose a persistent advocate in one appeal: he might destroy the right of appeal given to other persons if the jurisdiction of the Court must end on March 31st. Though the Court are bound to fix dates for sitting, so as, if possible, to finish all appeals, and though the parties are bound to lodge their appeals in proper time, yet, if by the act or default of the Court, the time is passed, the sessions are still clothed with authority to do justice which, if not done by them, cannot be done at all. There is nothing in the sections to contradict this view; there are no negative words, and the affirmative words support it. Public interest compels us to adopt it, and if this were the only ground this prohibition must fail.

But this appeal, though artfully framed as an appeal against totals, is in reality an attempt to revise the valuation list. That such an appeal should be presented in the absence of the parties rated, is manifestly unjust. To present such an appeal, with such an effect, is not to appeal against totals, but against the valuation of individual hereditaments. It has been suggested that this is merely one of the grounds for bringing the appeal. But it cannot truly be said that this appeal is anything else but an appeal against individual hereditaments. In my opinion the prohibition must go.

KAY, L.J.: The first question to be determined is whether s. 42 (13) of the Valuation (Metropolis) Act, 1869, is directory or imperative. The object of the Act, as stated in the preamble, is "to provide for a common basis of value for the purposes of government and local taxation, and to promote uniformity in the assessment of rateable

property in the metropolis." [After referring to the several sections already mentioned, his Lordship continued]: By s. 32 a right of appeal is given to "any body of persons authorized by law to levy rates, &c.," but only against totals, and not against the valuation of separate hereditaments; nor can an appeal against totals be brought on the ground that individual hereditaments are improperly valued, except by way of appeal against a decision of special sessions. As to s. 42 (13), it is to be observed that there is only an incidental mention of the day, March 31st. Similar language is used with regard to the sitting of special sessions in s. 42 (10). Therefore, if one sub-section is imperative, they both are. If they are, the more inaccurate a list is, the greater will be the number of appeals, probably, brought against it, and the less will be the chance that they will all be heard. I cannot think that the section intended to produce such a result. In s. 44 it is contemplated that appeals may be pending at the end of the year. It is said that this provision is satisfied by a reference to cases in which an appeal to a superior Court is pending, or in which a valuation list or valuation is ordered. But I cannot see why s. 44 should be limited to such cases. In my opinion the provisions of s. 42 (10) and (13) are directory only in circumstances such as have arisen here, and appeals which cannot be heard in time may legally be heard afterwards. This view is consistent with *R. v. Ingall* [1876], 2 Q. B. D. 199; *Met. Rat. App.* 176.

The next question is whether this appeal is a proper one. It is difficult to see that the London County Council are "aggrieved" by the totals. They are "aggrieved" if the thing complained of could in any way affect them. Now, as I understand, the County Council's budget is framed on all the totals. But if this appeal succeeded it would not affect the County Council, and would only give relief to the other parishes. But suppose that the County Council can be aggrieved. Having regard to s. 20,

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1893. the objection now taken to the totals is not open to the
 R. County Council until after a decision of special sessions.
 v. It is impossible to suppose that the County Council
 JUSTICES OF can obtain an alteration behind the back of the par-
 LONDON AND ticular occupier. An alteration of the totals for such
 L. C. C. a reason would be an "alteration in contravention of
 Kay, L.J. this Act," which is forbidden by s. 34. There must be a
 prohibition against further proceeding with the appeal on
 this ground, and this appeal must be dismissed.

Per Curiam.—The question whether the Court below
 had jurisdiction to give costs must stand over for further
 argument (a).

Appeal dismissed.

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1892.	LONDON COUNTY COUNCIL <i>v.</i> WEST HAM UNION.
May 16, 21,	LONDON COUNTY COUNCIL <i>v.</i> WOOLWICH UNION.
24;	
Dec. 16.	LONDON COUNTY COUNCIL <i>v.</i> ST. GEORGE'S UNION.
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Feb. 23, 27,	<i>Sewers—Sewage Works—Pumping Station—Absence of Profit—Bene-</i>
28;	<i>ficial Occupation—Hypothetical Tenant—Practice—Costs—Juris-</i>
March 2, 3;	<i>diction under Judicature Acts.</i>
May 30;	
Sept. 8.	

The appellants, as the successors of the Metropolitan Board of Works, were the owners and occupiers of certain sewers, sewage works, and a pumping station connected therewith, which were suitable and necessary to enable the appellants to discharge their statutory duties. The sewers, sewage works, and pumping station, while used as part of the Metropolitan sewage system, were incapable of yielding a profit. The sewers were constructed in an embankment raised upon land which had previously been rated.

Held, by the Court of Appeal, that the appellants could not, under 18 & 19 Vict. c. 120, s. 150, and 21 & 22 Vict. c. 104, s. 3, be tenants of the sewers, sewage works, or pumping station, and

(a) The question had not been argued at the date of going to press.

therefore could not be taken into account, for the purposes of rating, as possible hypothetical tenants.

Held, also, by the Court of Appeal, that assuming that the appellants had power to become tenants of the sewers, their occupation could not be beneficial, and was therefore not rateable.

But *held*, by the House of Lords, reversing the decision of the Court of Appeal, that, even assuming the appellants to be prevented by statute from becoming tenants of property vested in them, they must be taken into account, for the purpose of rating, as possible hypothetical tenants.

Owens College v. Overseers of Chorlton-upon-Medlock [1887], 18 Q. B. D. 403; *Ryde's Rat. App.* (1886-90) 256, overruled.

Held, also, by the House of Lords, that all property of which the occupation is valuable, though it yields no pecuniary profit to the occupier, is rateable, and therefore that the appellants were rateable in respect of the sewage works and pumping station.

R. v. School Board for London [1886], 17 Q. B. D. 738; *Ryde's Rat. App.* (1886-90) 235; and *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union* [1889], 24 Q. B. D. 197; *Ryde's Rat. App.* (1886-90) 314, approved.

Jones v. Mersey Docks [1865], 11 H. L. C. 443, followed.

Mersey Docks v. Overseers of Llanneilian [1884], 14 Q. B. D. 770 (upon one point) overruled.

Held, also, by the House of Lords, that sewers constructed in an embankment above ground, on land previously rated, were distinguishable from underground sewers, and that the appellants were rateable in respect of sewers constructed in such an embankment.

Metropolitan Board of Works v. West Ham [1870], L. R. 6 Q. B. 193 (upon this point), overruled.

R. v. Metropolitan Board of Works [1868], L. R. 4 Q. B. 15, questioned, as to the non-rateability of underground sewers.

Whether underground sewers are rateable or not, the House of Lords will be very slow to interfere with the exemption which has been allowed by a long course of practice, supported by decisions not of recent date.

An appeal to quarter sessions was dismissed, subject to a special case; the Queen's Bench Division dismissed the appeal, and affirmed the decision of quarter sessions. The Court of Appeal allowed the appeal, as to some of the questions raised therein.

Held, by the Court of Appeal, that they had no jurisdiction to order the respondents to pay the costs of the successful appeal, on the ground that they would have had no such jurisdiction before the Judicature Acts, and that those Acts and the rules made thereunder did not give any new jurisdiction to award costs.

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1892.	<i>R. v. Parlbby</i> , W. N. [1889], 190; and <i>In re Mills' Estate</i> [1886], 34 Ch. D. 24, followed.
L. C. C. v. ERITH.	<i>R. v. Fisherton Angar</i> [1880], 6 Q. B. D. 139, not followed.
— WEST HAM.	THESE appeals related to sewers or sewage works, all vested in the appellants, and may be reported together. The following summary of the decisions, with the dates, may make the proceedings more intelligible:
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London County Council v. Overseers of Erith, relating to sewers and sewage works only, which were admitted by the appellants on the authority of the *Burton-upon-Trent Case*, Ryde's Rat. App. (1886-90) 314, to be rateable; decision of the Court of Appeal to that effect, without argument, given on May 16, 1892.

London County Council v. West Ham, relating to both sewers and sewage works; appeal abandoned, as to the latter, on the authority of the *Erith Case*; decision by the Court of Appeal that the sewers were not rateable (on a ground equally applicable to sewage works) given on May 21, 1892.

London County Council v. Woolwich Union, and *London County Council v. St. George's Union*, both relating to sewage works; decision of the Court of Appeal, on the authority of the *West Ham Case*, that the sewage works were not rateable, given on December 16, 1892.

Appeals to the House of Lords were entered in the *Erith*, *West Ham*, and *St. George's Union Cases*, and are reported *infra*, p. 413 (a).

C. A. LONDON COUNTY COUNCIL *v.* OVERSEERS OF ERITH.

1892.
May 16. Appeal from a decision of the Queen's Bench Division on a special case stated by the Kent quarter sessions, on an appeal relating to certain sewage works in the parish of Erith.

(a) An appeal was entered by the Woolwich Union, but at the time of going to press had not been heard. It seems, however, clear that the decision of the House of Lords in the other cases would govern the *Woolwich Union Case*.

The special case was as follows :

1. The London County Council (the appellants) are the governing body of the administrative county of London, and are, by virtue of the provisions of 51 & 52 Vict. c. 41, the successors to the Metropolitan Board of Works, and are the present owners of the outfall works, pumping station and appurtenances, the subject-matter of this appeal. The appellants have to discharge all the duties of the Metropolitan Board of Works in reference to the drainage of the Metropolis.

2. The parish of Erith is situate in the county of Kent, and outside the jurisdiction of the appellants.

3. Pursuant to powers and duties contained in the various Acts passed for the better government and drainage of the metropolis, and known as the Metropolis Management Acts, 1855, 1858, and 1862, the Metropolitan Board of Works designed and constructed a system of drainage for the metropolitan area. Under the said system sewers and pumping stations were constructed by means whereof the sewage for that part of the metropolitan area which is situated south of the Thames is conveyed to Crossness, which is situate in the parish of Erith, and on the banks of the river Thames.

4. In order to enable the sewage so conveyed to Crossness to be discharged into the river Thames, the Metropolitan Board of Works purchased 37 acres, 2 roods of land on the bank of the river Thames, and on such land constructed the outfall works, pumping station and appurtenances, which have been rated to the said poor rate.

5. In order to enable the sewage to be raised from the sewers in which it had been conveyed to Crossness to a level sufficiently high to enable the sewage to be discharged into the river Thames, it was necessary to construct a pumping station with all the necessary machinery to pump the said sewage into a large reservoir. After the said sewage has been pumped in the said reservoir, sixteen million gallons per day are chemically treated, and the

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sludge is separated from the effluent water. The sludge, after being removed from the said reservoir, is taken in steam vessels and discharged beyond the mouth of the Thames into the Barrow Deep, whilst the effluent water is discharged from the said reservoirs into the river Thames, and four-fifths, or the greater portion of the sewage, is discharged in a crude state.

6. The said machinery, works, and pumping station were specially designed and constructed for the work which they have to do in connection with the metropolitan main drainage system, of which they form an essential integral part.

7. The said land, pumping station, and works were and are suitable and necessary to enable the appellants to discharge their statutable duty under the said Acts, and to dispose of the sewage, and are held, occupied, and used by the appellants in the manner and solely for the purposes herein set forth.

8. It is impossible to work the said outfall works except at a loss, and the land and pumping station, whilst used as part of the sewage system, are incapable of yielding a profit.

9. By the provisions of 18 & 19 Vict. c. 120, s. 150, and 21 & 22 Vict. c. 104, s. 3, the metropolitan board were and the appellants are now authorized either to purchase or to take on lease land for the purposes therein mentioned, and they have power by 18 & 19 Vict. c. 120, s. 154, to dispose by sale of the property so acquired.

10. It is agreed that if the land, outfall works, and pumping station in question were not in the possession of the appellants but in the hands of a private owner, and connected with the metropolitan sewage system to be let to the appellants as tenants, they would be willing to pay a yearly rent for the same, for the purposes of being used as part of and in connection with the metropolitan sewage system, sufficient to support the gross and net rateable value as fixed by the quarter sessions as hereinbefore

mentioned, but that except for the purposes of the metropolitan sewage system, and if the said works and premises were disconnected therefrom and in the hands of a tenant, applied to any other use or purpose they might be available for, the rateable value of the land and premises would be 2,678*l.* gross and 2,143*l.* net rateable value, and prior to the making of the present rate the appellants had been assessed for many years in respect of the said works and premises on such last-mentioned figures.

11. The appellants contend that the said works, pumping station, and premises, being only capable of beneficial occupation if used for other than the said sewage purposes, should be rated at the value for which the same would let to a hypothetical tenant from year to year, supposing the said works, pumping station, and premises were not used as part of the said sewage system, but were entirely disconnected therefrom, and applied to any other use or purpose for which they could be made available, and that the appellants should be rated according to the rule laid down by the Court of Queen's Bench in *Metropolitan Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193.

12. The respondents contend that as the appellants would have been willing to pay a rent for the said works, pumping station, and premises, if they had not been the owners, they must be taken into account as hypothetical tenants from year to year in order to ascertain the rateable value of the said premises, and that the rule as laid down in the *Burton-upon-Trent Corporation v. The Burton-upon-Trent Union* [1889], 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314, governs this case.

If the Court should be of opinion that the contention of the appellants is correct, then the order of quarter sessions is to be quashed. If the Court should be of opinion that the contention of the respondents is correct, then the order of quarter sessions is to be confirmed.

H. E. Ivory, for the appellants.

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1892.	<i>Fullarton</i> , Q.C., for the respondents.
L. C. C.	It was admitted (as had been done in the Queen's Bench
<i>v.</i>	Division) that the case was governed by <i>Mayor, &c. of</i>
ERITH.	<i>Burton-upon-Trent v. Burton-upon-Trent Union</i> [1889], 24
— WEST HAM.	Q. B. D. 197; Ryde's Rat. App. (1886-90) 314, and the
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The London County Council appealed to the House of Lords, and the appeal is reported *infra*, p. 413.

C. A. LONDON COUNTY COUNCIL *v.* WEST HAM UNION.

1892.
May 21.
Special case stated by the quarter sessions for the county of Essex, on an appeal relating to sewers and a pumping station, &c. connected therewith.

The appellants were assessed in respect of (1) "pumping station, land and premises, house, lodge, and cottages" in the parish of West Ham, at 6,227*l.* gross, and 4,982*l.* rateable, value; and (2) sewers in the same parish, described in the rate as "Outfall Mains," at 13,781*l.* gross, and 11,026*l.* rateable, value.

The quarter sessions confirmed the rate as to both assessments, subject to a special case; and the Queen's Bench Division confirmed this decision, the appellants (in effect) admitting that the questions raised were covered by authorities binding on the Queen's Bench Division.

The appellants appealed to the Court of Appeal.

The special case was as follows:—

1. The London County Council (the appellants) are the governing body of the administrative county of London, and are, by virtue of the provisions of [The Local Government Act, 1888] 51 & 52 Vict. c. 41, the successors to the Metropolitan Board of Works, and are the present owners of the outfall mains or sewers, pumping station, and other premises, the subject-matter of this appeal. The appellants have to discharge all the duties of the Metropolitan Board of Works in reference to the drainage of the metropolis.

2. Pursuant to powers and duties contained in the various Acts passed for the better government and drainage of the metropolis, and known as the Metropolis Management Acts, 1855, 1858, and 1862, the Metropolitan Board of Works designed and constructed a system of drainage for the metropolitan area. Under the said system, sewers and the pumping station in question, known as the Abbey Mills Pumping Station, were constructed, by means of which the sewage is lifted from a lower to a higher level for the purpose of being conveyed by what is called the Northern Outfall Sewer to the Barking Outfall Works and then discharged into the river Thames.

3. In order to enable the sewage from that part of the metropolitan area which is drained by the Northern Low Level Sewer to be raised to a higher level for the purpose of being discharged into the river Thames, it was necessary to construct a pumping station with the necessary machinery, and for this purpose the Metropolitan Board of Works purchased about $7\frac{1}{2}$ acres of land in the said parish and constructed thereon the pumping station in question, with all the necessary machinery and works. So much of the said outfall mains or sewers as are situated in the said parish are constructed in an embankment upon land purchased by the said Metropolitan Board of Works for such purpose, and occupying in all about 37 acres.

4. The said sewers, machinery, works, and pumping station were specially designed and constructed for the work which they have to do in connection with, and for the purposes of, the metropolitan main drainage system, of which they form an essential integral part.

5. The said lands, sewers, pumping station, and works were and are suitable and necessary to enable the appellants to discharge their statutable duties under the said Acts and to dispose of the sewage, and are held, occupied, and used by the appellants in the manner and solely for the purposes herein set forth.

6. The said lands, sewers, pumping station, and works,

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1892. L. C. C. <i>v.</i> ERITH. — WEST HAM. — WOOLWICH. — ST. GEORGE'S UNION. WEST HAM CASE.	whilst used as part of the metropolitan sewage system, are incapable of yielding a profit, and cannot be worked except at a loss. 7. By the provisions of 18 & 19 Vict. c. 120, s. 150, and 21 & 22 Vict. c. 104, s. 3, the Metropolitan Board of Works were, and the appellants are, now authorized to purchase or take on lease land for the purposes therein mentioned, and they are empowered by 18 & 19 Vict. c. 120, s. 154, to dispose by sale of the property so acquired.
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8. It is agreed that if the land, sewers, pumping station, and works in question were not in the possession of the appellants but in the hands of a private owner, and connected with the metropolitan sewage system, to be let to the appellants as tenants, they would be willing to pay a yearly rent for the same for the purpose of being used as part of, and in connection with, the metropolitan sewage system, sufficient to support the gross and rateable values of the said hereditaments as determined by the quarter sessions as hereinbefore mentioned; and it was found as a fact by the said quarter sessions that, except for the purposes of the metropolitan sewage system, and if the said land, pumping station, and works were disconnected therefrom, and in the hands of a tenant applied to any other use or purpose for which they might be available, the gross estimated rental of the said land, pumping station, and works (exclusive of sewers) was 3,125*l.* and the rateable value 2,500*l.*

9. The appellants contend that the said sewers and embankment ought not to be included in the rating, on the ground that they are not capable of a beneficial occupation, and in support of this contention they rely, among other things, upon the provisions of s. 45 of the West Ham Corporation (Improvements) Act, 1888 (51 & 52 Vict. c. clxxix.), and further, they contend that so much of their property as is liable to be rated to the relief of the poor should be rated at the value for which the same would let to a hypothetical tenant from year to year, supposing it

was not used for the purpose of the metropolitan sewage system, but was entirely disconnected therefrom and applied to any other use or purpose for which it could be made available by a tenant thereof, according to the rule laid down in *Metropolitan Board of Works v. West Ham Union* [1870], L. R. 6 Q. B. 193.

10. The respondents contend that it is not necessary to rateability that the premises, as actually occupied and utilised, should yield or be capable of yielding a commercial profit, but that it is sufficient if they could be let, and would command a rent from any possible hypothetical tenant from year to year; that the appellants ought to be taken into account as one of the possible hypothetical tenants from year to year; that the rule as laid down in the *Burton-upon-Trent Corporation v. Burton-upon-Trent Union* [1889], 24 Q. B. D. 197, governs this case, and that the present rate is right.

If the Court should be of opinion that the contention of the appellants is correct, then the order of quarter sessions is to be quashed.

If the Court should be of opinion that the contention of the respondents is correct, then the order of the quarter sessions is to be confirmed.

H. E. Ivory for the appellants: As to the pumping station and works, it is admitted that decisions binding on this Court are against the appellants, and it is not proposed to argue the question. But as to the sewers, it is submitted that the appellants are not rateable. In *R. v. Metropolitan Board of Works* [1868], L. R. 4 Q. B. 15, it was held that a pumping station and works were rateable, but that certain underground sewers in the parish of Greenwich were not. This decision was followed in *Metropolitan Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193, which related to the very sewers and pumping station the subject of the present appeal. The Queen's Bench held the pumping station rateable, and the sewers

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1892. not rateable. It was sought to distinguish the case from the previous decision as to the sewers on the ground that they were carried in an embankment and not underground, as in Greenwich, but the Court held there was no distinction. In *Hare v. Overseers of Putney* [1881], 7 Q. B. D. 223, it was held that the Metropolitan Board of Works were not rateable in respect of Putney Bridge, which had been transferred to them under an Act of Parliament, which abolished the tolls, and enacted that the bridge should be maintained by the board, the justices of Surrey paying an annual sum to the board in discharge of the liability of that county to maintain the bridge. In *Mersey Docks and Harbour Board v. Overseers of Llaneilian* [1884], 14 Q. B. D. 770, it was held that a lighthouse, in respect of which the board received tolls, which were not higher than were necessary to meet the expenditure, was not rateable, on the ground that it was incapable of profitable occupation. In *Mersey Docks and Harbour Board v. Jones* [1865], 11 H. L. C. 443, the board had been held rateable in respect of their docks. That case negatived the assumption that the receipt of profit by the actual occupiers was necessary to create rateability, but the Lord Chancellor (Lord Westbury) prefaces his judgment by saying (at p. 501): "Occupation, to be rateable, must be of property yielding or capable of yielding a net annual value, that is to say, a clear rent over and above the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the hereditament in a state to command such rent." In *Greig v. University of Edinburgh* [1868], L. R. 1 Sc. Ap. 348, the university buildings were held, by the House of Lords, to be rateable, but that was because certain matriculation fees, &c. were received. And Lord Westbury said (at p. 355): "It may possibly be held, that if property is occupied by persons for a purpose yielding no value at all, and they are absolutely prohibited from using it in any manner that would be productive of value, it may, I say,
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possibly be held that there is no rateable value in that property." In *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, Ryde's Rat. App. (1886-90) 314; 24 Q. B. D. 197, it was held that a sewage farm was rateable, and that decision is admitted to be conclusive against the present appellants, in this Court, as to the pumping station, but it is no authority for saying that a sewer is capable of beneficial occupation. To hold that it is, the long series of cases above cited (showing that an actual or potential beneficial occupation is necessary) must be overruled. In *R. v. School Board for London*, Ryde's Rat. App. (1886-90) 235; 17 Q. B. D. 738, it was held, no doubt, that the school board were rateable in respect of their schools, although no profit was in fact made; but the schools were not in themselves incapable of beneficial occupation, as is a sewer. [FRY, L.J.: I cannot say that a sewer can be said to be of no value. I would take a sewer myself, if I could get rid of the sewage from my house in no other way. Lord ESHER, M.R.: May we not imagine some person laying out sewers, for the purpose of letting them to the London County Council?] By s. 150 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), the Metropolitan Board of Works [now the London County Council] are authorized "to purchase or to take on lease for such term as they might think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorized to execute under this Act," &c. It is submitted, that though this section authorizes the appellants to become tenants of land necessary for the formation of sewers, it does not authorize them to become tenants of sewers already formed. Lastly, the appellants will rely, if necessary, on the provisions of the West Ham Corporation (Improvements) Act, 1888 (a).

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(a) By s. 45 of the West Ham Corporation (Improvements) Act, 1888 (referred to in par. 9 of the Special Case), "the upper surface of the

1892. *R. T. Reid, Q.C., and John Montefiore*, for the overseers of West Ham: The objection that no profit is made out of the sewers is met by *R. v. School Board for London*, Ryde's Rat. App. (1886-90) 235; 17 Q. B. D. 738.
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- [Lord ESHER, M.R.: The difficulty here is that we have to find a tenant; you cannot get an ordinary person to pay a rent because he can make no profit; and though the London County Council might be expected to give a rent, they cannot (it is said) legally become tenants.] The County Council are authorized to become tenants by s. 150 of the Metropolis Management Act, 1855, for the term "land" must include a sewer placed in, and forming part of the land. The rate is imposed upon land. Suppose the County Council desired to purchase a particular piece of land; it could not be contended that their statutory power to purchase did not apply because that particular piece of land contained a sewer. The powers to purchase and to take a lease are co-extensive, being given by the same words; consequently the County Council have power to take a lease of land containing a sewer already made; and there is no distinction between a lease for ninety-nine years and for one year.

Lord ESHER, M.R.: The only question on which we have to decide is, whether sewers are rateable. For the purposes of to-day the question as to the sewage works has been withdrawn, and it must be taken that the decision of the Court below as to the works is not to be interfered with

outfall sewer (excluding the slopes thereof . . .) shall, subject to the provisions of this part of this Act, be open during the following hours [specified in the Act] for free and uninterrupted use by the public for foot traffic . . . , and the Metropolitan Board of Works shall (subject to the provisions, &c.) allow such free and uninterrupted use, &c." The section provides for restrictions and regulations of the use, by means of bye-laws, &c., and by sub-s. (10) provides that "the soil and works of the outfall sewer shall remain vested in the Metropolitan Board of Works, and as between the corporation [of West Ham] and the Metropolitan Board of Works, all right to any valuable use therein shall be reserved to and remain vested in the Metropolitan Board of Works, provided that such use is not inconsistent with the provisions of this Act."

by us. The question as to the sewers is whether the London County Council are rateable. Now the Council is a body invented by Act of Parliament, with certain powers and liabilities. Being so invented, its only powers and liabilities are those given by Act of Parliament, either expressly or by necessary implication. It has the power of making sewers, and when they are made, it has certain powers and liabilities in connection with them. The liability is to use and to keep the sewers in such a state that they can carry off the sewage of London. The power of the Council, as to sewers, is to cause a rate to be made for the necessary expenses. It is obvious that the powers are limited thus, being only such as are necessary to enable the Council to do their duty. Have the County Council power to take a lease of sewers? That depends upon the statute, which enables them to purchase or to take on lease for such term as they may think fit any land which they may deem necessary or expedient "for the formation or protection" of sewers. There is no express power to take a lease of sewers, or to pay rent for sewers already made, but only to lease land for the purpose of forming or of protecting sewers. Is it a necessary inference that the Council should have power to take a lease of sewers? The terms of a lease might put upon the landlord the power and duty to repair; and one would expect that the Council would not be allowed to do less than to make the sewers, and to keep them under their sole control. In my opinion it is clear that under the Act of Parliament the Council have no power to take sewers on lease. It is not necessary for us to consider whether the Council have power to purchase land if they found a sewer already made thereon. It is said that the decision in *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, Ryde's Rat. App. (1886-90) 314; 24 Q. B. D. 197, governs this case; but that decision goes no further than this, that, in arriving at the rateable value, you must take into account the actual occupiers; therefore, if the London County Council can be tenants of

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FRY, L.J.: I am of the same opinion. Three questions have to be answered in order to determine rateability: (1) Is there an occupier of the premises to be rated? (2) Is there a reasonable expectation of letting them from year to year? and (3) Is there a reasonable expectation of so letting them at a rent of the kind prescribed by the Parochial Assessment Act? In *R. v. School Board for London*, Ryde's Rat. App. (1886-90) 235; 17 Q. B. D. 738, Lord Esher, M.R., said: "The mode of finding out the value is laid down in the Act, and it is to ascertain the rent which a tenant (not *the* tenant), taking one year with another, might reasonably be expected to pay; it is also implied that where the owner occupies, he is to be considered as if he were a tenant. The directions given by the Act are equivalent to saying that one must look at all possible tenants, and the phraseology does not exclude an owner who himself occupies the premises. Therefore, an owner in occupation of the premises is not excluded from con-

sideration as a possible tenant. Now the School Board can be tenant of premises. If by the terms of any statute it could not legally be tenant it would be excluded from the calculation. It is said that the School Board ought to be excluded because it can never obtain any beneficial interest from its tenancy; but it can be a tenant: it has a duty to perform which may induce or force it to become a tenant. It follows, therefore, that it would be wrong to exclude the School Board from the list of possible hypothetical tenants, whether it is in the position of owner or in that of occupier." I agreed with that judgment when it was delivered, and I agree with it now. In the present case, therefore, we must inquire whether the London County Council can be a tenant; and, if it can, whether it is within the description of a possible hypothetical tenant. In my opinion the County Council cannot be tenants; they have only power under s. 150 of the Metropolis Management Act, 1855, to buy or take on lease "any land which they may deem necessary or expedient for the formation or protection of any works which they are authorized to execute." The works are the main drainage system, and they are not authorized to buy or take on lease works already made. The object of the Act was to constitute a responsible body, with the duty of making the system of drainage. It was not intended that they should buy old works, and, therefore, *primâ facie*, they could not become tenants. But it has been argued that sewers are "land" within the meaning of this section. Assume, then, that the County Council have legally the power to take a lease of land. The finding in par. 8 of the special case assumes that the sewers are already connected with the metropolitan sewage system, and states that the London County Council would take the sewers after their formation for the purposes of user; but there is no finding in the special case that the County Council would take the premises from year to year for the purposes of the formation of the sewage system. There-

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fore, the County Council are within the description given in *R. v. School Board for London*; they are persons who cannot legally be tenants.

LOPES, L.J.: There has been no argument as to the pumping-station and works, and the only question we have to decide is as to the sewers. In order that they may be rateable, we must hold that the London County Council can be possible tenants. Under the Metropolis Management Act, 1855, I think they cannot, because the Act authorizes them only to buy or lease land for the formation or protection of their works, and it is obvious that it was not intended that the County Council should be tenants of sewers ready made. But, assuming that they can be, I should have thought, but for *R. v. School Board for London*, Ryde's Rat. App. (1886-90) 235; 17 Q. B. D. 738, that the London County Council under statutory restrictions are not the kind of hypothetical tenant contemplated by the rating Acts. I think those Acts contemplated an ordinary tenant, and not a person who was bound to become tenant at a loss; and I said so in the *Burton Case*, Ryde's Rat. App. (1886-90) 314; 24 Q. B. D. 197. In that case I do not think we intended to overrule *R. v. Metropolitan Board of Works* [1868], L. R. 4 Q. B. 15, in which the Court said: "As regards the sewers, we are of opinion that they are not rateable, on the short ground that they are not at present the subject of a beneficial occupation. . . . Their occupation yields no profit to the board as occupiers, either actual or potential."

The Court reserved the question of costs for further consideration.

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 May 24.

R. T. Reid, Q.C., for the respondents: Before 1879, in appeals by way of special case from quarter sessions, the order of the sessions was brought up by *certiorari*, and recognizances were necessary. [See 5 Geo. 2, c. 19, s. 2.]

Consequently, an appellant from quarter sessions, if unsuccessful, paid costs under the recognizances; but, if successful, received none, the Court of Queen's Bench having no statutory power (apart from the recognizances) to give costs. By the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40, the writ of *certiorari* is no longer required. In *R. v. Fisherton Angar* [1880], 6 Q. B. D. 139, it was held that proceedings on a case stated by sessions on an appeal against a poor rate, were "civil proceedings on the Crown side" within Ord. LXII., r. 2, and that therefore costs were in the discretion of the Court under Ord. LV. of the Rules of 1880. [See, now, Ord. LXV. of the Rules of 1883.] But in *Re Mills' Estate* [1886], 34 Ch. D. 24, the Court of Appeal held that the Judicature Acts and Rules do not enable the Court or a judge to order costs to be paid by persons who, before those Acts came into operation, could not have been ordered to pay them, the effect and intention of the Acts and Rules being not to give any new jurisdiction to award costs, but merely to regulate the mode in which costs are to be dealt with in cases where the Court antecedently had jurisdiction to award costs. This decision was followed in *R. v. Parlbby*, W. N. 1889, p. 190, which was a decision on a case stated by justices. It is admitted that every Court has inherent jurisdiction to give costs *against* the party invoking the jurisdiction of the Court; but, apart from statute, there is no power to give costs *to* the party invoking the jurisdiction. The power to give costs in a Court of common law depends upon statute only: *Garnett v. Bradley* [1878], 3 App. Cas. at p. 962. By s. 5 of 53 & 54 Vict. c. 44 (commonly called Finlay's Act), "Subject to the Supreme Court of Judicature Acts and the rules of Court made thereunder, and to the express provisions of any statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge, and the Court or

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1892. judge shall have full power to determine by whom and to what extent such costs are to be paid." But by s. 4, "Nothing in this Act shall alter the practice . . . in proceedings on the Crown side of the Queen's Bench Division." The present appellants entered into recognizances.

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H. E. Ivory for the appellants: Recognizances under the old practice were merely the machinery for the recovery of costs, and must not be confounded with the jurisdiction to order costs to be paid. *R. v. Fisherton Angar* [1880], 6 Q. B. D. 139, is precisely in point, and, as appears from *R. v. Parlbby*, W. N. 1889, p. 190, was frequently acted upon before the decision in *Re Mills' Estate* [1886], 34 Ch. D. 24, which case dealt with the costs of proceedings outside the Supreme Court under the Lands Clauses Consolidation Acts. That case has, therefore, no application to the present question. The main object of 53 & 54 Vict. c. 44 being to deal with proceedings in applications for new trials, it was intended by s. 4 to prevent, *e.g.*, a motion for a new trial of an indictment against a corporation being taken to the Court of Appeal. It was not intended that the application of s. 5 should be restricted by s. 4. [FRY, L.J.: There were formerly particular Acts, dealing with costs in certain special proceedings, which have been swept away by the Judicature Acts, and s. 5 was put in to get rid of any question as to the power to give costs.] Unless s. 5 has the general application contended for, it is useless. [FRY, L.J.: It gets rid of the doubt whether Ord. LXV. had the effect of a statute.] In *R. v. Meyer* [1875], 1 Q. B. D. 173, a rule for a *certiorari* to bring up an order of sessions was made absolute with costs against the justices. [Lord ESHER, M.R.: The costs seem to have been given by way of punishment for misconduct, and the question of jurisdiction was not argued. Moreover, in a note (at p. 178) it is stated that "the granting of costs when a rule is made absolute for a *certiorari* is contrary to the usual practice."]

Reference was also made to Corner's Crown Practice (see pp. 78, 79), and the Crown Office Rules, 1886, Form 19 ("Recognizance on Special Case on Order of Sessions").

LORD Esher, M.R.: This is a proceeding on the Crown side of the Queen's Bench Division; and, before the Judicature Acts were passed, a practice arose with regard to costs, owing to the inability of the Queen's Bench to deal with the costs in such a case as this. I accept the doctrine that at common law there was no power in the Common Law Courts to deal with costs, and that the whole of the power of those Courts to deal with costs depends upon statute. Power to deal with costs had been given in many other cases, but not in cases like this.

Then came the Judicature Acts, and the orders made thereunder. The Court had to construe Ord. LXV., r. 1, upon this very point in the case of *In re Mills' Estate* [1886], 34 Ch. D. 24, and the Court of Appeal decided that the order did not give any jurisdiction over costs where none existed before: that it merely altered the practice where the jurisdiction existed before, but that it did not enlarge the jurisdiction. Doubts, however, existed in some minds as to the effect of Ord. LXV., r. 1, and the legislature, by 53 & 54 Vict. c. 44, put the matter beyond a doubt in a section which gives a statutory rule to the same effect as the order. It seems to me obvious that the legislature in 1890, when they passed the Act, knew of the limitation which had been put by the Courts upon the general words of Ord. LXV., and they adopted that limitation by using the general words of the Order in s. 5, but taking out of those general words the matters mentioned in s. 4. The true construction is that s. 5 is a general enactment, and s. 4 has the effect of a proviso on the general words used in s. 5.

The question, therefore, is whether this case comes within the words of s. 4, which says that "nothing in this Act shall alter the practice . . . in proceedings on the

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1892. Crown side of the Queen's Bench Division." The words
 L. C. C. "nothing in this Act" cover s. 5. It has been argued
 v. that the words refer to the preceding sections only: but
 ERITH. that would be to read in the word "hereinbefore." It
 — WEST HAM. would be to add words to the section, which we cannot do.
 — WOOLWICH. As I have already said, this is a proceeding on the Crown
 — ST. GEORGE'S side of the Queen's Bench Division, and therefore the
 UNION. practice in this case has not been altered by the Act of
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It has been said that s. 5 ought to be read in its fullest import unless there is something in the context to limit it. That is true; but there is something in the context to limit it, viz., s. 4. We have, therefore, no power to deal with costs in such a proceeding as this.

FRY, L.J.: I am of the same opinion. And I wish only to state my view with regard to the effect of the Act of 1890. Both in *Foster v. Great Western Ry. Co.* [1882], 8 Q. B. D. 515, and in *In re Mills' Estate* [1886], 34 Ch. D. 24, the same rule of construction was laid down: viz., that the effect of Ord. LXV. r. 1, was not to enlarge the jurisdiction over costs, but to indicate the mode in which jurisdiction was to be exercised. I am inclined to think that the effect of s. 5 of the Act of 1890 is to give jurisdiction over costs in many cases; and that the general words of s. 5 were intended to give jurisdiction if necessary. It may be that the rule laid down in *In re Mills' Estate* will not hereafter be generally applicable. I think that the appellants would have succeeded in the present case but for the provisions of s. 4, which exclude these proceedings from the operation of the Act of 1890.

LOPES, L.J.: In former times, a case like this would have been brought up by *certiorari*, which is now no longer necessary. But the case is in the same position as if it had been brought up by *certiorari*. If it had been brought up by *certiorari* there would have been no inherent

or original jurisdiction of the Court to deal with the costs. The only jurisdiction they could have would be under a statute or under the recognizances. There is no jurisdiction under any statute: therefore the only jurisdiction to deal with costs would be under the recognizances. But the recognizances apply only if the order is affirmed; where the order is quashed there are no costs. This was the position before the Judicature Acts, and the Judicature Acts introduced no change. I agree with the statement of the law on this point in the note by Master Mellor, adopted by Huddleston, B., in *R. v. Parlbby*, W. N. 1889, p. 190. I also agree with what was said by Cotton, L.J., in *In re Mills' Estate*, 34 Ch. D. at p. 33: "The object of the [Judicature] Acts was not to give new jurisdiction. The true construction of Ord. LXV. is that it was only intended to regulate the way in which costs were to be dealt with when power was given to the Court, or independently of Act of Parliament, the Court had power to deal with costs." It appears, therefore, that the passing of the Judicature Acts has made no change in this respect. And if it be necessary to fortify this view, it seems to me that it is strongly fortified by s. 4 of the Act of 1890. The result, therefore, is that, the order having been quashed, this Court has no jurisdiction to deal with the costs at quarter sessions, nor in the Divisional Court, nor here.

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 Lopes, L.J.

Appeal allowed: application for costs refused (a).

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C. A.

 1892.
 December 16.

Appeal by the London County Council from a decision of the Queen's Bench Division affirming a decision of the London Quarter Sessions (reported *supra*, p. 126).

(a) The respondents appealed to the House of Lords: *vide infra*, p. 413.

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The following are the material paragraphs of the special case in the Woolwich appeal:—

1. The London County Council, the appellants, are the governing body of the administrative county of London, and are by virtue of the provisions of 51 & 52 Vict. c. 41, the successors to the Metropolitan Board of Works, and are the present owners of the deodorizing and outfall works, machinery, land and buildings, the subject-matter of this appeal. The appellants have to discharge all the duties of the Metropolitan Board of Works in reference to the drainage of the metropolis.

2. Pursuant to powers and duties contained in the various Acts passed for the better government and drainage of the metropolis, and known as the Metropolitan Management Acts, 1855, 1858, and 1862, the Metropolitan Board of Works and the appellants designed and constructed a system of drainage and of treatment of sewage for the metropolitan area. Such system is hereinafter referred to as “the metropolitan system.” Under the said system the land in question was purchased by the Metropolitan Board of Works; and the necessary works, buildings and machinery, have since been constructed thereon by the Metropolitan Board of Works and by the appellants for the purpose of storing, deodorizing, and otherwise treating the sewage drained from the whole of the metropolitan area north of the Thames, which averages from 96 to 126 millions of gallons daily.

3. The said works, buildings and machinery, were specially designed and constructed for the work which they have to do in connection with, and for the purposes of, the metropolitan system, of which they form an essential part.

4. The said land, works, buildings and machinery, were and are suitable and necessary to enable the appellants to discharge their statutory duties under the said Acts, and for the advantage of the inhabitants of the metropolis to treat and dispose of the sewage, and are

held, occupied, and used by the appellants in the manner and solely for the purposes herein set forth; and the appellants are entitled to levy rates upon the whole metropolitan area, including the parish of Woolwich, to enable them to occupy and use the said land, works, buildings and machinery as aforesaid. The sewage to be treated is brought to the said premises from places outside the parish of Woolwich, and, by reason of the high level of the sewers bringing the same, the drainage of the parish of Woolwich north of the Thames is not admitted into the said metropolitan system.

5. The appellants do not derive any pecuniary profit from the said hereditaments, and the works are maintained by the appellants under the provisions of the above-mentioned Acts.

6. By the provisions of 18 & 19 Vict. c. 120, s. 150, and 21 & 22 Vict. c. 104, s. 3, and the Acts amending the same, the Metropolitan Board of Works were, and the appellants are now, authorized to purchase, or take on lease or otherwise, land for the purposes therein mentioned; and they are empowered by 18 & 19 Vict. c. 120, s. 154, to dispose by sale or otherwise of the property so acquired.

7. The quarter sessions found as a fact that the appellants were practically the only possible tenants of the said premises, so long as they remained part of the said metropolitan system, and that if the said premises belonged to a private owner, he would let, and the appellants would hire, them for the purpose of being used in connection with and as part of the said metropolitan system, at a yearly rent sufficiently high to support the gross and rateable values of 20,567*l.* and 17,139*l.* respectively.

8. The quarter sessions further found as a fact that if the said premises were not used in connection with and as part of the said metropolitan system, but were entirely disconnected therefrom, and applied to any other use or purpose for which they could be made available, the gross value thereof was 1,200*l.* and the rateable value 1,000*l.*

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1892. 9. [Contention by appellants that the premises should
 L. C. C. be assessed according to the rule laid down in *Metropolitan
 v. Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193.]
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 — WEST HAM. 10. [Contention by respondents that the case was
 — WOOLWICH. governed by *R. v. School Board for London* [1886], 17
 — ST. GEORGE'S Q. B. D. 738; Ryde's Rat. App. (1886-90) 235; and *Mayor,
 UNION. &c. of Burton-upon-Trent v. Burton-upon-Trent Union*
 WOOLWICH [1889], 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314.
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The second case (relating to the St. George's Union) raised the same question of law as the *Woolwich Case*, and was an appeal from a decision of the Queen's Bench Division, affirming a decision of the London Quarter Sessions on an appeal relating to land, buildings, pumping-station, and machinery used in connection with the main drainage system of the metropolis, and vested in and occupied by the appellants as the successors of the Metropolitan Board of Works.

The assessment appealed against amounted to 5,858*l.* gross, and 3,994*l.* rateable value. The quarter sessions found that if the London County Council were not the owners they would be willing to pay a yearly rent for the premises used, as they were, in fact, used, sufficient to support the assessment appealed against. They further found that if the premises were not used in connection with the main drainage system, but were disconnected therefrom, and in the hands of a tenant who applied them to any other use or purpose for which they might be made available, and the appellants were not taken into consideration as possible tenants, then the gross value would be 1,577*l.*, and the rateable value 1,318*l.* The quarter sessions held that the case was governed by *R. v. School Board for London*, [1886], 17 Q. B. D. 738; Ryde's Rat. App. (1886-90) 235; and *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, [1889], 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314.

[It is not necessary to set out the special case which

followed almost verbatim (*mutatis mutandis*) the special case in the appeal relating to Woolwich.]

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H. E. Ivory (*Walter C. Ryde* with him) for the appellants: This case is governed by the decision in the *West Ham Case* (*supra*, p. 388) that the London County Council could not legally be tenants, and had no beneficial occupation of the sewers. The reasons for that decision apply equally to the sewage works the subject of these appeals. [He was then stopped.]

Littler, Q.C., and *Sinclair Cox*, for the Woolwich Union: The present case is governed by the decision of this Court in the *Erith Case* (*vide supra*, p. 384). [Lord ESHER, M.R.: That was not a decision by this Court, and amounts merely to an admission by counsel that the works were rateable.] This case is governed by *R. v. School Board for London*, Ryde's Rat. App. (1886-90) 235; 17 Q. B. D. 738. The London County Council could be the hypothetical tenants of these sewage works. The Metropolitan Board might have taken a lease under 21 & 22 Vict. c. 104, ss. 3, 23, which Act was not cited in the *West Ham Case* before this Court (*supra*, p. 388). The only question raised by the special case is, at which of the two amounts are the appellants to be rated: rateability is not disputed. Sewage works and sewers are in a different category: see *R. v. Metropolitan Board of Works* [1868], L. R. 4 Q. B. 15; and *Metropolitan Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193.

F. M. White, Q.C., and *Danckwerts*, for the St. George's Union: The rateability of a pumping station only—not of sewers—is in question in this case. Assuming that sewers are not rateable, then the case is governed by *Guest v. East Dean* [1872], L. R. 7 Q. B. 334, in which buildings and machinery, &c. (though occupied in connection with a

1892. non-rateable subject-matter, viz., an iron mine) were held
 L. C. C. rateable. Further, even if the County Council have no
 v. power to be tenants of these premises under the Metro-
 ERITH. politan Acts, that power is given them by the Local
 — WEST HAM. Government Act, 1888, s. 40 (8), (9), and s. 65. This
 — WOOLWICH. Act also was not cited in the *West Ham Case*, *supra*, p. 388.
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LORD ESHER, M.R. : These appeals are governed by the decision of this Court in the *West Ham Case*, *supra*, p. 388. That case raised the question of the rateability of sewers forming part of the metropolitan main drainage system, which was made and carried on under ss. 135 and 150 of the Metropolis Management Act, 1855. The question we then had to decide was whether the sewers were rateable, and we held they were not by reason of those sections. Sect. 150 enacts that "it shall be lawful for the Metropolitan Board of Works to purchase or to take on lease, for such term as they may think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorized to execute under this Act, &c." That section does not apply expressly to the drainage system at all, which is dealt with in s. 135. By s. 150 the Board were authorized to purchase or take on lease land for the formation or protection of any works authorized; and by s. 135, the Board "shall make such sewers and works as they may think necessary for preventing all or any part of the sewage within the metropolis from flowing or passing into the river Thames in or near the metropolis, and shall cause such sewers and works to be completed on or before December 31, 1860, and shall also make all such other sewers and works, and such diversions or alterations of any existing sewers or works vested in them under this Act as they may from time to time think necessary for the effectual sewerage and drainage of the metropolis." We held, whether rightly or wrongly, that when once the Board had purchased the land and put the sewers in it,

the sewers, and the land occupied by those sewers, were not rateable. The Board could not, after becoming owners, let the land to tenants; they were bound to make the sewers and to continue to use them for the purposes of the sewage system. Therefore there could be no hypothetical tenant other than the Board; for no one else could take the premises which the Board themselves were bound to use and to keep in order for the sewage. The only question then was, could the Board themselves be the "hypothetical tenant" within the meaning of *R. v. School Board for London*, 17 Q. B. D. 738; Ryde's Rat. App. (1886-90) 235. All the difficulty in these cases is due to the introduction of the "hypothetical tenant." In *R. v. School Board for London*, we said that the owner himself might be the hypothetical tenant, if he could legally be a tenant and pay a rent; and we held that the school board could legally be a tenant. But in the *West Ham Case* (*supra*, p. 388), we held that the owners, the London County Council, could not be the hypothetical tenants of their sewers. We considered that s. 135 of the Metropolis Management Act, 1855, was inconsistent with their being tenants; for if one supposed a lease of the sewers it would be necessary to suppose that the landlord would have a power of re-entry if the rent were not paid; and this would be absolutely contrary to the duty of the County Council to provide for the sewerage of London. We held that the sewers were not rateable; we were asked to leave the sewage works out of consideration, and we left them for another occasion, and that occasion has now arisen. The pumping station is an indispensable part of the main drainage system, and it is included among the "works" mentioned in ss. 135 and 150 of the Act of 1855. Now s. 135 puts sewers and "works" on precisely the same footing. And if, for reasons based on that section, we held that sewers were not rateable, we must come to the same conclusion with regard to the "works" to which the same section applies. On the Act of 1855, if it stood alone,

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1892,	we must say that our reasoning applies equally to sewers and works.
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ERITH.	But it is said that we ought to differ from our decision
— WEST HAM.	in the <i>West Ham Case</i> , because of certain Acts which were
— WOOLWICH.	existing at the time of that decision, but were not then
- ST. GEORGE'S	called to our attention. This is a somewhat startling
UNION.	proposition. The first of the Acts referred to is the
WOOLWICH	Metropolis Management Amendment Act, 1858 (21 & 22
AND	Vict. c. 104). By s. 3, "the powers of taking land given
ST. GEORGE'S	by 18 & 19 Vict. c. 120, and all other powers in such Act
CASES.	relating to sewage works, shall extend and be applicable
Lord Esher,	as well to works for deodorizing sewage as to all other
M.R.	works under this Act, and all such works shall be deemed
	works for the sewerage or drainage of the Metropolis."
	The effect of that section is that the board may purchase
	or take a lease of lands for the purpose of deodorizing
	sewage; but it does not add in the least to the powers conferred by ss. 135 and 150 of the Act of 1855. Then s. 23 of the Act of 1858 was referred to; it provides for the deodorization of sewage pending the completion of the purification of the Thames, but it does not in the least alter the powers of taking land. Then it was said that the Local Government Act, 1888, increases the powers of the County Council: by s. 40 (8), the powers and duties of the Metropolitan Board are transferred to the London County Council. If they are transferred, they must be the same powers and duties which attached to the Metropolitan Board. If so, the powers of the London County Council to lease land are the same powers as were given by s. 150 of the Act of 1855. Then s. 40 (9) of the Local Government Act, 1888, applies to the London County Council (<i>inter alia</i>) s. 65 of that Act, which enacts that "a county council may, for the purpose of any of their powers and duties, ... acquire, purchase, or take on lease, or exchange, any lands, or any easements or rights over or in land." Amongst the powers and duties of the London County Council is the power and duty of dealing with the drainage of the

Metropolis according to the provisions of the former Acts. Neither of these sections in any way alters the position of the London County Council, with regard to the drainage system, from that of the Metropolitan Board of Works. Therefore, none of the Acts referred to alter the construction or application of the Act of 1855. On that Act we decided in the *West Ham Case*, and I do not see how we can depart from our decision in that case, even if it be inconsistent with earlier decisions. If our decision differs from the opinion of Lush, J., in *R. v. Metropolitan Board of Works* [1868], L. R. 4 Q. B. 15, we are bound by our own decision in the Court of Appeal. In my opinion, both these appeals must be allowed.

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LOPES, L.J.: In my opinion, these “works” are not rateable. No valid distinction can, in my opinion, be drawn between these “works” and the sewers which we had to deal with in the *West Ham Case* (*supra*, p. 388). I think that they stand upon precisely the same footing, and that the same reasoning which we applied to the sewers is applicable also to these works.

It has been urged that Acts subsequent to the Metropolis Management Act, 1855, were not brought to our notice in the *West Ham Case*, and, if they had been, would have changed our decision. They have now been brought before us, and I am certain that they would not have altered the view I took in the *West Ham Case*, nor do they alter my view that these appeals are governed by that case.

I wish to say something upon the law of rating generally, as I understand that these cases are to be taken to the House of Lords. I am rather glad to hear that they are, for, in my opinion, some of the decisions on the law of rating are conflicting. The governing case is *Jones v. Mersey Docks* [1865], 11 H. L. C. 443, in which it was held that every description of property is rateable, provided it be capable of beneficial occupation. But for *R. v. School*

1892.	<i>Board for London</i> [1886], 17 Q. B. D. 738; <i>Ryde's Rat.</i>
L. C. C.	App. (1886-90) 235, I should have doubted whether an
<i>v.</i>	occupier under statutory restrictions, who suffers and must
ERITH.	suffer a loss by his occupation, is the kind of hypothetical
— WEST HAM.	tenant contemplated by the Parochial Assessment Act.
— WOOLWICH.	I should have thought that the Act contemplated an
— ST. GEORGE'S	ordinary tenant, whose occupation might possibly be bene-
UNION.	ficial, and not one who was bound to occupy at a loss (a).
WOOLWICH	I should have thought that a possible beneficial occupation
AND	was necessary in order to render any hereditament rateable.
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CASES.	
Lopes, L.J.	

KAY, L.J.: This is the first rating case in which I have taken any part, and I wish to state the reasons why I concur in the decision. The *West Ham Case* (*supra*, p. 388), came before the Master of the Rolls, and Fry and Lopes, L.JJ. The Master of the Rolls and Lopes, L.J., have just stated their view of that decision, which was this: that although the Metropolitan Board of Works and the London County Council had power to take land on lease for the purpose of making sewers and other drainage works, they had no power to take on lease sewers and works which had been already made. In that case the sewers in question had been made by the Metropolitan Board of Works: see par. 2 of the special case, *supra*, p. 389. The question of the rateability of the sewage works was not before the Court in that case, and they had only to deal with sewers. Those sewers which were constructed by the Metropolitan Board of Works, and transferred to the London County Council, were sewers of which neither of those bodies could take a lease. They could have taken a lease of land and constructed sewers in it, but they could not take a lease of sewers already constructed. Therefore, they could not be tenants at all, and

(a) Compare the remarks of the same learned judge to the same effect in *Mayor, &c. of Burton-upon-Trent v. Burton-upon-Trent Union*, *Ryde's Rat. App.* (1886-90) at p. 326.

could not be regarded as hypothetical tenants. I cannot see why that reasoning should not apply equally to the works before us in this case. It seems to me that neither the Metropolitan Board nor the London County Council could take a lease of these works when constructed. I give no opinion upon this point, except that this case comes within the decision in the *West Ham Case* (*supra*, p. 388); and the reason of that decision seems to me to apply equally to both cases.

There is another question, no doubt (to which Lopes, L.J., has referred), whether this kind of property, of which the London County Council can have no beneficial possession, can be rated. On that point I reserve my opinion, as it does not arise here. It seems to me that all property which has, or may have, an annual value, is *prima facie* within the rating Acts, not according to the value which it actually has, but according to the value which it may have. [Lopes, L.J.: I meant that.] I prefer to rest my judgment upon the ground already given, that the decision in the *West Ham Case* applies to this case. These appeals must be allowed.

Walter C. Ryde, for the appellants, asked for costs.

The Court held (following the *West Ham Case*, *supra*, p. 398) that they had no power to give costs.

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LONDON COUNTY COUNCIL *v.* WEST HAM UNION.

LONDON COUNTY COUNCIL *v.* ST. GEORGE'S UNION.

In the *Erith Case* the London County Council appealed, and in the *West Ham Case* and the *St. George's Union Case* the respondents appealed to the House of Lords (a).

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WOOLWICH
AND
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CASES.

Kay, L.J.

H. L.

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Feb. 23, 27,

28;

March 2, 3;

May 30.

(a) As to the *Woolwich Union Case*, see note (a), *supra*, p. 384.

1893. Sir *E. Clarke*, Q.C., *Bosanquet*, Q.C., and *H. E. Ivory*,
 L. C. C. for the London County Council in all the cases.
 v.
 ERITH. *Balfour Browne*, Q.C., *Fullarton*, Q.C., and *Morton Smith*,
 — WEST HAM. for the overseers of Erith.
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Sir *R. E. Webster*, Q.C., *R. T. Reid*, Q.C., and *John Montefiore*, for the West Ham Union.

F. M. White, Q.C., and *Danckwerts*, for the St. George's Union.

[In the arguments nothing material was added to the arguments and the reasons given for the judgments in the Courts below.

[At the opening of the *Erith Case* it was pointed out that the special case did not raise the question of rateability; but, by consent, the point was argued in all the appeals.]

The House took time for consideration.

H. L. The LORD CHANCELLOR (Lord Herschell): The London
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 1893. County Council, by whom the first of these appeals is pre-
 September 8. sented, are the successors of the Metropolitan Board of
 Works, and are owners of the outfall works, pumping
 station, and appurtenances, the rating of which is in
 question. The sewage south of the Thames is conveyed
 to Crossness, in the parish of Erith, and for the purpose of
 discharging it into the Thames the Metropolitan Board of
 Works purchased 37 acres of land and constructed upon it
 these outfall works, pumping station, and appurtenances.
 It was agreed (paragraph 10 of special case) "that if the
 land, outfall works, and pumping station in question were
 not in the possession of the appellants but in the hands of
 a private owner, and connected with the metropolitan
 sewage system, to be let to the appellants as tenants, they
 would be willing to pay a yearly rent for the same for the

purpose of being used as part of, and in connection with, the metropolitan sewage system, sufficient to support the gross and net rateable value as fixed by the quarter sessions, as hereinbefore mentioned, but that except for the purposes of the metropolitan sewage system, and if the said works and premises were disconnected therefrom and, in the hands of a tenant, applied to any other use or purpose they might be available for, the rateable value of the land and premises would be 2,678*l.* gross, and 2,143*l.* net rateable, value." The appellants contend:—"That the said works, pumping station, and premises being only capable of beneficial occupation if used for other than the said sewage purposes should be rated at the value for which the same would let to a hypothetical tenant from year to year, supposing the said works, pumping station, and premises were not used as part of the said sewage system, but were entirely disconnected therefrom and applied to any other use or purpose for which they could be made available, and that the appellants should be rated according to the rule laid down by the Court of Queen's Bench in *Metropolitan Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193." The respondents contended:—"That as the appellants would have been willing to pay a rent for the said works, pumping station, and premises if they had not been the owners, they must be taken into account as hypothetical tenants from year to year in order to ascertain the rateable value of the said premises, and that the rule as laid down in *The Burton-upon-Trent Corporation v. Burton-upon-Trent Union*, 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314, governs this case." The Queen's Bench Division gave judgment for the respondents, and this decision was affirmed by the Court of Appeal. No reasons were given in either Court, as the case was regarded as governed by the decision of the Court of Appeal in *The Burton-upon-Trent Corporation v. Burton-upon-Trent Union*. In the case of *The Churchwardens and Overseers of the Poor of the Parish of West Ham v. The*

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1893. L. C. C. v. ERITH. — WEST HAM. - ST. GEORGE'S UNION. Ld. Herschell L.C.	<i>London County Council</i>, which is also before your lordships for judgment, the question was whether the London County Council were liable to be rated; and, if so, on what basis in respect of a portion of the main sewers and of the pumping station situate in the parish of West Ham. So much of the outfall mains or sewers as are in that parish are constructed in an embankment on land purchased by the Metropolitan Board of Works, comprising about 37 acres. It was agreed that if the lands, sewers, pumping station, and works were in the hands of a private person, to be let to the appellants as tenants, they would be willing to pay a sum sufficient to support the gross and rateable value, as determined by the quarter sessions; and that if the land, pumping station, and works were disconnected from the Metropolitan sewage system, and, in the hands of a tenant, applied to any other use or purpose, the gross estimated rental of the land, pumping station, and works (exclusive of sewers) was 3,125<i>l.</i>, and the rateable value 2,500<i>l.</i> The Divisional Court of Queen's Bench affirmed the order of the quarter sessions, but the Court of Appeal took a different view. The only question determined by the Court of Appeal was whether the sewers were rateable; whether the other works were rateable or not was withdrawn from their consideration. The Master of the Rolls thought the sewers were not rateable, because, unless it were the London County Council, no tenant could be found who would give any rent for them, and that the London County Council could not be the hypothetical tenant for two reasons: first, because they had no power to take the sewers on lease; and, secondly, because they must occupy them subject to the restriction that they could make nothing by them. Fry, L.J., thought, that in order that a hereditament should be rateable, three conditions must be fulfilled. First, there must be an occupier; secondly, a reasonable expectation of letting from year to year to a tenant; thirdly, a reasonable expectation of so letting at a
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rent of the kind prescribed by the statute of Will. 4. He came to the conclusion that there was no suggestion of any other hypothetical tenant than the London County Council, and that they were not persons who could be deemed hypothetical tenants, inasmuch as they could not become tenants of sewers. Lopes, L.J., said that if it had not been for the *School Board Case* (to which I will refer presently), he should have thought that, being occupiers under such statutory restrictions as those by which they are affected, and bearing in mind the fact that they must suffer a loss from their occupation, the London County Council were not the kind of hypothetical tenant contemplated by the statute. In the case of *The Assessment Committee of St. George's Union v. London County Council*, which also stands for judgment in your lordships' house, the question raised by the special case was precisely the same as that raised in the *Erith Case*. It was found as a fact that if the London County Council had not been the owners of the lands, works, buildings, pumping station and machinery, they would have been willing to pay a rent for them sufficient to support the gross and net rateable value appearing in the valuation list. It was further found that if the lands, &c. were disconnected from the main drainage system and in the hands of a tenant who applied them to any other use or purpose for which they might be available, the gross value of the premises would be 1,577*l.*, and the rateable value 1,318*l.* The London County Council contended, before the quarter sessions, that they ought to be rated at this lower value, according to the rule laid down by the Court of Queen's Bench in *Metropolitan Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193. The respondents contended that the assessment should be at the higher value. The Queen's Bench Division followed the *Erith Case*, which they considered identical in its facts, and upheld the higher assessment. The Court of Appeal reversed this decision. They held that the case was governed by the *West Ham*

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1893. *Case*, decided by them, the effect of which I have just stated. In their view no distinction could be drawn between the rateability of sewers and that of lands and pumping-stations, which were part of the sewerage system; that if the one subject were not rateable it followed that the other was not rateable either. I can see no distinction between the facts of the *Erith Case* and those of the *St. George's Case*; they appear to me to be identical. The judgments of the Court of Appeal in the two cases are, therefore, in direct conflict. The former case was, as I have said, not argued, because it was supposed to be governed by the decision in the *Burton-upon-Trent Case* [1889], 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314. The distinction drawn between the *Burton-upon-Trent Case*, which was argued, and the *St. George's Case*—and, as far as I can see, the only possible distinction—was that whilst the Court held that in the *Burton-upon-Trent Case* the sewerage authority could have become tenants of the land and pumping-stations which they owned, it was not, in the opinion of the Court, within the power of the London County Council to become tenants of the land and pumping-station which belonged to them. I shall have presently to consider the validity of this distinction, but before doing so it will be convenient to call attention to the decision arrived at by the Court of Queen's Bench in 1868 upon a statement of facts identical with that which came before the Court of Appeal in the *Erith* and *St. George's Cases*. I refer to the case of *R. v. Metropolitan Board of Works*, L. R. 4 Q. B. 15. Two points were raised in that case: first, whether the main sewers of the Metropolitan Board of Works were rateable; and, secondly, whether a pumping-station and other premises belonging to them were rateable. The Court of Queen's Bench (consisting of Cockburn, C.J., and Lush, Hannen, and Hayes, JJ.) held that the sewers were not rateable. With regard to the pumping-station the Court came to a different conclusion. They held that it was rateable, inasmuch as

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it had an occupation value. "The Board" (said the learned judge, who delivered the judgment of the Court) "must have rented such premises, if they had not become owners of them, and a tenant might easily be found to take them if the Board were able and willing to let them. A distinction was attempted to be drawn in favour of pumping apparatus, as being a necessary adjunct to the sewers, and it was contended that as the sewers are not rateable this adjunct must be exempted as being part of a non-rateable subject. But we cannot accede to this view. The machinery stands on land which is valuable for occupation, and which would undoubtedly be rateable in the hands of any other occupier; and its rateable quality cannot be affected by the particular use to which it is applied by the Board." It may be that the actual judgment in the *St. George's Case* (*supra*, p. 408) is not at variance with the judgment of the Court of Queen's Bench in the case of *R. v. Metropolitan Board of Works* [1868], L. R. 4 Q. B. 15. The former case was so framed that if the Court were of opinion that the then appellants ought to be rated according to the rule laid down by the Court of Queen's Bench in the case of *Metropolitan Board of Works v. West Ham* [1870], L. R. 6 Q. B. 193 (to which I shall have presently to advert), and that the decision of the court of quarter sessions, holding that the London County Council were to be taken into account as possible hypothetical tenants, and that the case was governed by the principles laid down in the *Burton-upon-Trent Case*, was erroneous in law, the order of the quarter sessions was to be quashed. The judgment in the *St. George's Case* merely quashed the order of quarter sessions; it was therefore right, even though the pumping station were rateable, unless it were, according to the contention of the parish, rateable on the basis that the London County Council were to be taken into account as possible hypothetical tenants. But the Court of Appeal distinctly rested their judgment on the ground that the pumping station was not rateable any more than the sewers, and

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1893. L. C. C. v. ERITH. — WEST HAM. - ST. GEORGE'S UNION. Ld. Herschell L.C.	that no distinction could be drawn between the two cases, whilst the Court of Queen's Bench, in <i>R. v. Metropolitan Board of Works</i> [1868], L. R. 4 Q. B. 15, no less emphatically drew such a distinction and held the pumping station to be rateable and the sewers not. The Court of Appeal did not canvass the reasons adduced in the judgment of the Court of Queen's Bench, in <i>R. v. Metropolitan Board of Works</i> for differentiating the two cases. The Master of the Rolls said that he was not in the least persuaded that the view taken by the Court of Appeal differed from the view which Lush, J., took. The other learned judges made no reference to the Queen's Bench judgment. I have said enough to show that the question of the rateability of these pumping stations is at present in a most unsatisfactory condition. I purpose confining myself in the first instance to the question of the rateability of these pumping stations, and to a consideration, if they be rateable, of the proper mode of assessing them, reserving for discussion at a later period the case of the sewers. The decision of this House in <i>Jones v. Mersey Docks</i> [1865], 11 H. L. 443, marks an epoch in the law of rating. Many of the earlier decisions are tainted with this vice, that they proceed upon the supposition that lands held for public purposes are on that account not rateable. The doctrine is now exploded, your lordships' House having distinctly determined that the circumstance that land is held by a public body for public purposes does not affect its rateability. Much reliance was placed in the argument at the bar in the present cases on the language used by Blackburn, J., in delivering the opinion of the judges in the <i>Mersey Docks Case</i> . The learned judge said (11 H. L. C. at p. 462): "It is clear that there can be no valid rate unless the occupation be such as to be of value; and if the words 'beneficial occupation' are to be understood as merely signifying that the occupation is of value (which is obviously the sense in which the phrase is used in many of the cases cited at the bar), it is clear that a beneficial occupation is essential as
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the foundation of the rate." The learned judge, in my opinion, did not and could not have meant that it is essential to rateability that a particular occupier of the land can make a pecuniary profit by the use to which he is putting it. It is, I think, rateable whenever its occupation is of value. At the time when the Metropolitan Board of Works purchased in the parish of Erith 37 acres of land for the purposes of their works, the land was, of course, rateable. That it ceased to be so as soon as the Metropolitan Board of Works became the owners can scarcely be contended. For the purpose of discharging a duty imposed upon them by law, they found it expedient to erect certain buildings upon the land, and to connect them with sewers in other lands belonging to them. I am unable to see how this could produce the result that premises previously rateable ceased to be so. It is found as a fact, as I have already stated, that if the works were disconnected from the Metropolitan sewage system, and in the hands of a tenant applied to any other purpose for which they might be available, their net rateable value would be 2,143*l*. Suppose some other system of sewage were adopted, and the pumping station were no longer applied to its present use, I do not think it could be doubted that the London County Council would be rateable in respect of it, and that its rateable value would be at least the sum thus fixed. If so, I cannot think that it is exempt from rateability, at the present time, on account of the particular use to which it is put by the owner, a use which it is clear might be abandoned at any time if it were thought expedient to do so. No obligation was imposed upon the Metropolitan Board of Works, and none is imposed on the London County Council, of maintaining in existence any particular sewage work. So far, I have dealt only with the question of rateability; upon what principle the assessment ought to be made, and what considerations are proper to be taken into account, are questions which, to my mind, are involved in much greater difficulty. In the case of

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1893. *Metropolitan Board of Works v. West Ham*, L. R. 6 Q. B. 193, which came before the Court of Queen's Bench in 1870; the question was raised on what principle the Metropolitan Board of Works were to be assessed in respect of a pumping station. It was held that they were to be assessed upon the basis of the rent which would be paid by a hypothetical tenant from year to year, supposing the pumping station were not used for the purpose of main drainage, but was entirely disconnected therefrom, and applied to any other use or purpose for which it could be made available by a tenant. It was admitted by the learned counsel who appeared in that case for the respondents, that the Metropolitan Board of Works were rateable upon the basis adopted by the Court. Before the quarter sessions, the parish had contended that the proper principle to apply in rating property was to treat it as if belonging to and constructed by a private owner, and in his hands to be let to the board as yearly tenants; but this contention appears to have been abandoned before the Court of Queen's Bench. The suggestion that a public body who, in discharge of the duties imposed on them by law, have become the owners of land and buildings thereon might be themselves taken into account as possible tenants, was, so far as I am aware, first insisted on in the case of *R. v. School Board for London* [1886], 17 Q. B. D. 738; Ryde's Rat. App. (1886-90) 235. The Court of Appeal held that, in determining what was the rateable value of a school board building, the school board might be regarded as possible tenants, and what they would have been willing, had they not been owners, to have paid as rent for the premises might be taken into consideration. The arguments urged at your lordships' bar in the present case render it necessary to review this decision, and to determine whether it was sound in point of law. The rule which is to govern the assessment of premises to the poor rate was laid down by the legislature in 6 & 7 Will. 4, c. 96, s. 1, which provides that, "No rate for the relief of
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the poor should be allowed or be of any force which should not be made upon an estimate of the net annual value of the hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent." In the Act to provide for uniformity in the assessment of rateable property in the Metropolis (32 & 33 Vict. c. 67), the term "gross value" is defined as "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent." The term "rateable value" is defined as meaning "the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid." So far as the question to be determined in this case is concerned, I do not think the terms of the later Act are important. "The annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament" is the same thing as "the rent at which the same might reasonably be expected to let from year to year." It has never been doubted that the rent which is actually being paid by the occupier does not necessarily indicate what is the rent which a tenant might reasonably be expected to pay, or that an owner who is in occupation, and who may not be willing to let on any terms, is none the less rateable. The tenant described by the statute has always been spoken of by the Court as "the hypothetical tenant." Whether the premises are in the occupation of the owner or not, the question to be answered is, Supposing they were vacant

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1893. L. C. C. v. ERITH. — WEST HAM. - ST. GEORGE'S UNION. Ld. Herschell L.C.	and to let, what rent might reasonably be expected to be obtained for them? So far there can, I think, be no difference of opinion. But then arises the question, Is the owner to be regarded as one of the possible tenants in considering what rent might reasonably be expected? Bearing in mind what was the object of the legislature in prescribing this test of annual value, I cannot myself entertain any doubt that the owner ought to be thus taken into account. I entirely concur in the decision arrived at by the Court of Appeal in the case of <i>R. v. School Board for London</i> [1886], Ryde's Rat. App. (1886—90), 235. I think the circumstances of that case when examined are cogent to support the view which there obtained acceptance. If the School Board were to hire buildings for the purpose of establishing a school, it could not be contested that these buildings would be rateable, and that the rent which the School Board paid would be a most important element in determining the sum at which they were to be assessed. If, instead of hiring school buildings, they erect upon land similarly situate like buildings, or if they were to buy the reversion of the buildings they hired, and so become the owners, why in either of these cases should the assessment be different? The premises are to them in all these cases of the same value, and their occupation is equally beneficial; why should the sum at which they are to be assessed to the relief of the poor differ? Again, suppose premises of occupation value for agricultural purposes were to be adapted by the owner for use in connection with the manufacture of some article under a patent process, which he alone was licensed to use; and that in their then condition no person would be willing to take them, would the premises cease to be rateable or be assessable only at a nominal sum, although they might be much more valuable to the owner and their occupation much more beneficial than if they had remained fit for agriculture and in a condition to be readily let for that purpose? I cannot think so. These are illustrations. Many others might be adduced pointing in the same direction, and to my mind conclusively
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showing that the object of the legislature, in enacting the provisions of the statute of Will. 4, to which I have referred, would be defeated if the question what the owner would have given if the premises had been to let and he had been free to take them were discarded from consideration. The decision arrived at in the *School Board Case* was followed in the *Burton-upon-Trent Case* [1889], 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314, which related to a pumping station in connection with a sewage farm. In the case of *Mersey Docks and Harbour Board v. Overseers of Llaneilian* [1884], 14 Q. B. D. 770, which was earlier than either of these cases, language was used by some of the learned judges which it is not easy to reconcile with the decision in the *Burton-upon-Trent Case*, and, indeed, I am not sure that the decisions in the two cases are altogether consistent. In *Mersey Docks v. Llaneilian* the question to be decided was the rateability of the Mersey Docks and Harbour Board, and the principle upon which they were to be assessed in respect of a lighthouse, telegraph station, buildings, and lands within the parish of Llaneilian. By the Mersey Docks Acts certain lighthouses theretofore erected, and also a system of telegraphs established for the information and benefit of shipping entering the port of Liverpool, became vested in the Mersey Docks and Harbour Board, to be maintained and worked by them. The lighthouse in question was one of those which had been previously maintained by the trustees of the Liverpool Docks, and the lease of which for a term expiring in 1863 became vested in the appellants on their incorporation. The appellants afterwards purchased the freehold of the site of the lighthouse and some adjoining land, and spent a considerable sum in structural improvements of the lighthouse. The Master of the Rolls came to the conclusion, as a matter of fact, that under the statutes regulating the matter the conservancy receipts applicable to the maintenance of the lighthouses could never exceed the conservancy expenditure, and he came, as a consequence, to the conclusion that the hypothetical tenant

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1893. must rent them subject to the Acts of Parliament, and
 L. C. C. that therefore it would be a profitless occupation, inasmuch
 v. as no person who received the earnings could make any
 ERITH. profit therefrom. He therefore thought the lighthouse had
 — WEST HAM. no beneficial value, and that there could be no beneficial
 - ST. GEORGE'S occupation. "That occupation was," he said, "to repeat
 UNION. the phrase we used a short time ago, struck with sterility
 — by the Acts of Parliament." The phrase to which the
 Ld. Herschell Master of the Rolls referred was made use of in the case
 L.C. of *West Bromwich School Board v. Overseers of West Bromwich* [1884], 13 Q. B. D. 929. In that case the question of the rateability of a school board in respect of a public elementary school belonging to them was raised for the first time. Expressions were used by some of the learned judges which do not seem to me to be quite in harmony with the views arrived at on more mature consideration of the matter in the case of *R. v. School Board for London* [1886], 17 Q. B. D. 738; Ryde's Rat. App. (1886—90), 235. There is, however, no conflict between the two decisions, inasmuch as the school board was held rateable. Bowen, L.J., said (13 Q. B. D., at p. 942):—"I will assume that in the hands of the school board it is not capable of being beneficially occupied; but we must consider whether it is capable of being beneficially occupied in the hands of any other person. If land is by law struck with sterility when in any and everybody's hands, so that no profit can be derived from the occupation of it, it cannot be rated to the relief of the poor. But if the school-house is not used by this school board for any profitable purpose, it by no means follows that the site of it must be sterile in every other person's hands." Now, if land is "struck with sterility in any and everybody's hands," whether by law or by its inherent condition, so that its occupation is, and would be, of no value to any one, I should quite agree that it cannot be rated to the relief of the poor. But I must demur to the view that the question whether profit (by which I understand is meant pecuniary profit) can be derived from the occupa-

tion by the occupier is a criterion which determines whether the premises are rateable, and at what amount they should be assessed, and I do not think that a building in the hands of a school board is incapable of being beneficially occupied by them, and is not so occupied because they are prohibited from deriving pecuniary profit from its use. Fry, L.J., in the case of *R. v. School Board for London* (17 Q. B. D., at p. 742), said:—"The term 'sterility' has been introduced into the cases because, as a general rule, a profit is produced, but it does not by any means follow that because there is no profit there is no value. There could be no better illustration of this than in the present case." I think the learned judge here points to the true test—whether the occupation be such as to be of value. This is the language used by Lord Blackburn, and I have already said that the possibility of making a pecuniary profit is not in my opinion the test whether the occupation is of value. As the case of *Mersey Docks and Harbour Board v. Llanecilian* [1884], 14 Q. B. D. 770, was much relied on by the counsel for the London County Council, I feel bound to say that I cannot agree with the view there adopted—that, because no pecuniary profit could be derived from the conservancy dues to which the board were entitled in respect of their lighthouse, its occupation was not a beneficial occupation, and had no pecuniary value, or that it was in any sense which could exempt it from rateability "struck with sterility." It appears that the lighthouse had at one time actually been held by the board as tenants. During that period its rateability could hardly be in question. Did the board become less rateable or assessable on any different basis because they ceased to be tenants and became the owners? The lighthouse, as it appears to me, was of value to the dock board, inasmuch as it assisted to protect from danger vessels which might use their docks and pay them dock dues. I think some confusion has arisen from regarding the term "beneficial occupation" as meaning

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1893. L. C. C. v. BRITH. — WEST HAM. - ST. GEORGE'S UNION. Ld. Herschell L.C.	the same thing as an occupation by which a profit could be earned. As was pointed out by the Court of Queen's Bench in <i>Governors of Bristol Poor v. Wait</i> [1836], 5 A. & E. 1, this is not its meaning when used as a test of rateability. The governors of the poor of Bristol had taken certain property outside the limits of their city for the purpose of putting out their poor, either simply to lodge them or to employ them at their discretion. In holding the governors rateable, Lord Denman, C.J., in delivering the considered judgment of the Court of Queen's Bench, said: "The absence of 'beneficial occupation' was also much insisted upon, and it was contended that that is the true criterion to ascertain whether property be rateable or not. It is not to be denied but that this phrase 'beneficial occupation' has been in frequent use, and, generally speaking, it serves tolerably well to convey rather a popular notion than to give a certain rule for deciding the question of rateability in every instance. Because, if by beneficial be meant profitable, or anything like it, the expression is obviously fallacious." There is no doubt a certain class of cases in which the amount of profit which can be earned by the occupation of a hereditament is very material in ascertaining the sum at which it should be assessed. In the case of gasworks, waterworks, and other industrial undertakings, where a hereditament is enhanced in value by its connection with a profit-bearing undertaking, the profits earned and the share of those profits attributable to any particular hereditament have to be taken into account, and in such cases as these any restrictions which the law has imposed upon the profit-earning capacity of the undertaking must, of course, be considered. But I do not think this class of cases affords any guide to the assessment of such hereditaments as those with regard to which your lordships have now to lay down the proper principle of rating. Owing to a statement made in the course of the argument at the bar, I wish, in order to avoid possible misconception, to add a few words
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as to the method which ought to be followed when it is manifest that an owner would be willing to pay a higher rent than could be obtained from any other tenant. It was said that a practice prevails of taking 5 per cent. on the cost in the case of buildings as a basis for arriving at the rental. Such a rule of thumb may be all very well where the premises would be likely to find competing tenants, but is not by any means necessarily applicable where it is thought that the owner would be likely to give a higher rental than any one else. It would often be obvious that he would never be willing to pay the rent arrived at in such a fashion, inasmuch as it would be more advantageous for him to become the owner. There are many other circumstances, too, which may affect the answer to the question what the owner of premises would have been willing to give if instead of becoming the owner he had become the tenant of them. In all cases of the description of which I am speaking, the whole of the circumstances and conditions under which the owner has become the occupier must be taken into consideration, and no higher rent must be fixed as the basis of assessment than that which it is believed the owner would really be willing to pay for the occupation of the premises. Having given my reasons for thinking that the judgment of the Court of Appeal in the *Burton-upon-Trent Case* [1889], 24 Q. B. D. 197; Ryde's Rat. App. (1886-90) 314, was correct, and that the principles there laid down are in accordance with the law, I turn now to the point which it was thought differentiated the *St. George's Case* from the *Burton-upon-Trent Case*—namely, that neither the Metropolitan Board of Works nor the London County Council could, under the statutes which gave them their powers, have become tenants of the pumping stations, of which they were and are the owners. The point was first glanced at in the judgment of the Master of the Rolls in *R. v. School Board for London* (17 Q. B. D. at p. 740). "If," said the learned judge, "by the terms of any statute, it" (the school board) "could not legally be tenant

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1893. L. C. C. v. ERITH. — WEST HAM. — ST. GEORGE'S UNION. Ld. Herschell L.C.	it would be excluded from the calculation." The view thus suggested was adopted by the Court of Appeal as the ground of their decision in the case of <i>Owens College v. Overseers of Chorlton-upon-Medlock</i> [1887], 18 Q. B. D. 403; Ryde's Rat. App. (1886-90) 256. The appellants were the governors of Owens College. The property rated consisted of land purchased by them for the college and college buildings erected and provided by them under the Owens College Act, 1870. The governors were empowered to acquire and hold land as a site for the college, and other land not exceeding 200 acres. They were also empowered to grant leases of the lands vested in them, except the site of the college. The college could not be carried on as a collegiate institution at a profit in a commercial sense. The lands had been purchased at an expense of 25,000 <i>l.</i> and upwards, and the buildings had cost more than 125,000 <i>l.</i> The respondents had assessed the governors of the college at a rateable value of 3,285 <i>l.</i> The case stated found that, if let for any purposes to which (without considerable structural alterations) they were capable of being turned, they would not let for more than 1,300 <i>l.</i> per annum gross rental. Upon the basis of a rateable value thus arrived at, the college authorities were willing to be assessed. The Master of the Rolls said that if the college could be considered as possible tenants that valuation would be wrong. The test for the determination of the case seemed to him to be whether they could legally be tenants of the site for the purposes of the Act; "for if they could not," said the learned judge, "can it be right to say that what they would give for rent should be taken into account." After giving his reasons for thinking that the site which the governors were authorized to take was what they were to acquire as owners in fee simple, the learned judge proceeded: "If so, it appears to me to follow that they ought not to be taken into consideration as hypothetical tenants; can it be supposed that the governors are seeking to become tenants of a site when the Act of Parliament says they cannot be tenants? It seems to me
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that the proposition involves the answer to it." The other learned judges concurred in this view. Bowen, L.J., said: "It seems to me that they ought to be excluded from the class of persons who might reasonably be expected to give rent for the premises, because they cannot, as matters stand, ever become tenant of the premises for the purposes of a site for the college; a fetter is already imposed upon them, and they can never now hold the premises, except as owners in fee simple." Fry, L.J., said: "It seems to me that the result is that the land is dedicated for ever as the site of a building for the college, and that the appellants are incapable of hiring that land for the purposes of the college, and therefore that the contention is well founded that, being prohibited from hiring the land, they cannot be taken into consideration as possible tenants." My lords, I have stated fully the reasons which led the learned judges to the conclusion that the governors of Owens College were to be left out of account as possible tenants when determining the annual value of the premises occupied by them, and I have most carefully considered these reasons with all the respect which is justly due to the views of the learned judges who concurred in them; but I am unable to share the opinion which they expressed. The conclusion arrived at is in its result sufficiently startling. Two public bodies might have erected buildings similar in all respects upon lands similar in situation, and of equal value; and these buildings might be occupied in the same way and applied to the same purposes; and yet, if one of these bodies had power, under the statute constituting it, to hire such buildings, and the other had no such power, the rateable value of the buildings might, and almost certainly would, be different; that is to say, the buildings would have a different annual value, for the words in the statute of Will. 4, which follow the expression "annual value," only provide a means of arriving at what is the annual value of the premises. Why should the annual or the

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1893: L. C. C. <i>v.</i> ERITH. — WEST HAM. - ST. GEORGE'S UNION. Ld. Herschell L.C.	rateable value of the premises for the purposes of the poor law depend upon the statutory power of the owner to take them supposing he had not been the owner? I am unable to discover any satisfactory reason for this difference, and none seems to me to be suggested by the judgments in the <i>Owens College Case</i> . I do not think the distinction drawn can be confined to premises belonging to and occupied by public bodies for public purposes. A private individual might receive money under an obligation to erect with it a building upon a particular site, to be occupied by him during his lifetime, and with a prohibition against letting to anyone else. If the principle adopted in the <i>Owens College Case</i> be a sound one, such an owner would, I presume, be equally excluded from consideration. No attempt was made to show that it was reasonable or just that the distinction drawn in that case should affect the rateability of premises, or their assessment to the poor rate; it appears to have been thought a necessary consequence of the application to such a case of the rule for the assessment of property laid down by the statute of Will. 4. No doubt, if this were so, the conclusion reached was a right one, however unsatisfactory or even unjust it might be, that the rateability or assessment of premises in other respects similar, and occupied for similar purposes, should depend upon whether the owner could have taken the premises which he occupied as tenant, or was only enabled to become the owner of them. But having regard to the language used in the statute, and the construction which has been put upon it, I do not myself feel the difficulty by which the Court of Appeal seem to have been pressed. An owner who is in occupation of premises can, of course, never reasonably be expected to take them as tenant from year to year—he cannot become tenant to himself. Yet it has been held that the rent which, if the property were in other hands, he would be willing to pay, may be taken into account when inquiring what is its annual value—that
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is, at what sum it might reasonably be expected to let from year to year. If the hypothesis be admissible that the owner might himself be amongst the possible tenants, although, as a matter of fact, he could not be so, it seems to me no more violent hypothesis to conceive him as amongst the possible tenants, even although he may be subject to certain legal restrictions which would prevent his becoming so. And, having regard to the scope and object of the enactment in the statute of Will. 4, I can see no sufficient reason why if in the one case he may be regarded as the hypothetical tenant he may not equally be so regarded in the other. It seems to me that a contrary conclusion ought not to be arrived at unless the provisions of the statute inexorably require it. For these reasons I am of opinion that the judgment in the *St. George's Case* cannot be supported, even on the assumption that the Court of Appeal rightly held that the London County Council were only empowered to become the owners, and could not, in fact, have become the tenants of the pumping stations in question. It follows that, in my opinion, the judgment in the case of *London County Council v. Overseers of Erith* ought to be affirmed, and the appeal dismissed with costs; whilst in the case of *The Assessment Committee of St. George's Union v. London County Council* the judgment must be reversed, with the usual consequence as to costs. I now turn to the separate case of the rateability of the main outfall sewers in the parish of West Ham. But before dealing with the particular facts relating to the main sewers in that parish, I desire to consider the case generally of the main sewers formerly vested in the Metropolitan Board of Works, and now in the London County Council. It was held, as I have said, that the sewers were not rateable. The ground of the decision was thus put by Lush, J. (L. R. 4 Q. B. at p. 26), who delivered the judgment of the Court: "We are of opinion that they are not rateable, on the short ground that they are

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1893. L. C. C. <i>v.</i> ERITH. — WEST HAM. — ST. GEORGE'S UNION. Ld. Herschell L.C.	not at present the subject of a beneficial occupation. No payment is made to the Board for the use of them; the rates which they are empowered to levy are for the expense of construction and maintenance, and nothing more. Their occupation yields no profit to the Board, as occupiers, either actual or potential." The effect of this decision was not to establish an exemption of property which down to that time had been rated. By section 135 of 18 & 19 Vict. c. 120, the main sewers then vested in the Commissioners of Sewers of the City of London and in the Metropolitan Commissioners of Sewers were vested in the Metropolitan Board of Works, and there was at the same time conferred on them the power to construct other sewage works to prevent the sewage within the metropolis passing into the river Thames near the metropolis. The case stated by the court of quarter sessions in <i>R. v. Metropolitan Board of Works</i> [1868], L. R. 4 Q. B. 15, found, as a fact, that neither the late Commissioners of Sewers nor the Metropolitan Board of Works had ever been rated to the relief of the poor in respect of the sewers. It appears, therefore, that for a very long period both before and since the decision in <i>R. v. Metropolitan Board of Works</i> , this particular subject has not been treated as rateable. I cannot regard as altogether satisfactory, in view of the fuller consideration which has since been given to the matter, the grounds upon which the Court of Queen's Bench rested the non-rateability of these sewers; the judgment seems to assume that there can only be a beneficial occupation where it is such as to yield a profit to the public body occupying the premises. I have already said that, in my opinion, the true test is whether the occupation is of value, and not whether it is one by which pecuniary profit can be made. But it would undoubtedly be a serious matter that a hereditament which has for so long a period been deemed free from rateability, should now, for the first time, be subjected to it. And there is this peculiarity about the particular subject with which I am
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dealing,—until the sewer was made, no rateable subject-matter existed where the sewer now is. If its use as a sewer were abandoned, its rateability would cease; for it is obvious that no person would be willing to take it at any rent. It is not like the case of land previously rateable which has been adapted to purposes different from those for which it was previously employed, and whose rateable character would not on that account be affected. I cannot pretend that the law of rating is at present in a satisfactory condition, or that, by the application of well-settled principles, the rateability of public bodies in respect of property such as that with which your lordships are dealing, can be rested upon a sound and consistent basis. In the case of *Sheffield United Gaslight Co. v. Overseers of Sheffield* [1863], 4 B. & S. 135, Blackburn, J., after quoting the observation of Wightman, J., in the case of *R. v. West Middlesex Waterworks Co.* [1859], 1 E. & E. 716, that there appeared so much difficulty in satisfactorily applying the parochial principle of rating by estimating the rent which a tenant would give for the subject-matter in such a case as that before him, as practically to amount nearly, if not entirely, to an impossibility of doing so satisfactorily; and after stating that the whole subject-matter appeared to be involved in so much difficulty and uncertainty that the Court had taken much time in considering whether they could not place the rules as to the rating of these companies on more intelligible and satisfactory principles, capable of uniform application, added:—"We have not, however, succeeded in laying down a rule which would be consistent with the existing legislation and decisions on the subject, and would at the same time be capable of being satisfactorily worked; and we are strongly impressed with the importance of not unsettling the law as established by past decisions, where we cannot lay down a rule which is not open to exception. On the whole, therefore, we feel that our only course,

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until the Legislature shall think fit to interfere, is to adhere to the case of *R. v. West Middlesex Waterworks Co.* My lords, I entirely concur with the learned judge in deeming it inexpedient to interfere in such a matter as this with a long course of practice supported by decisions which are not of very recent date. Therefore, even if it be not possible to rest upon grounds altogether satisfactory to the exemption of these sewers, yet the case being as I have said a very peculiar one, I could not advise your lordships to depart from a practice which has prevailed for a very long period, and which has been sanctioned by judicial authority. So far, I have referred to the case of sewers under land, the surface of which was occupied by other persons, and in ordinary course assessed to the poor rate. But the particular case of the outfall sewer in West Ham is an exceptional one; that sewer is not constructed under ground. Thirty-seven acres of land were purchased by the Metropolitan Board of Works for the purpose of this portion of the outfall sewer. The land so purchased had down to the time of its purchase been assessed to the poor rate. The sewer is carried in an earthen and concrete embankment erected upon the land at an average height of twenty-one feet above the general surface of the land adjoining. The work thus constructed, therefore, differs from the mere creation of a sewer below the surface of land which continued afterwards, as before, liable to assessment, but was an adaptation, to the purposes of the Board of land already occupied and rated. I confess I see the utmost difficulty in distinguishing such an erection as this upon the surface of land from any other erection specially suitable for the purposes of a particular occupier, but which might render it of less value for occupation by other persons not requiring it for that special purpose. And in general owners who occupy land in order to discharge a duty imposed on them by statute may be regarded as amongst the hypothetical tenants, I cannot find any sound

basis on which to rest a distinction in favour of the Metropolitan Board of Works or their successors, the London County Council, in respect of this particular use of the land which they own. It was, I am aware, held by the Court of Queen's Bench in the year 1870 (*Metropolitan Board of Works v. West Ham*, L. R. 6 Q. B. 193) that there was no distinction, for rating purposes, between a sewer underground and one carried upon an embankment; but I have already stated to your lordships the only ground on which the exemption of the sewers generally can, in my judgment, be rested, and I have pointed out the distinction which exists between an underground sewer and an adaptation of land already rateable to a particular purpose. Lush, J., stated that the rateable quality of land was not to be determined by what it once was, or by what it might thereafter become, but by what it was at the time the rate was made. I quite agree with this; but if it be the law that the owner of a hereditament may be regarded as amongst the hypothetical tenants, that rule would seem as applicable to the particular erection, whose rateability is the matter in question, as to any other. For these reasons, I am of opinion that even if the sewers are in general exempt from rateability the particular sewer work in the parish of West Ham cannot be so treated, and that the judgment of the Court of Appeal must therefore be reversed, and the judgment of the Queen's Bench Division restored, and I move your lordships accordingly.

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Lord WATSON: My lords, at the close of the argument upon these appeals, all your lordships were of one mind as to their disposal. I have very carefully considered, and I entirely concur in, the reasons for the judgment, which have been so fully and clearly expressed by my noble and learned friend the Lord Chancellor.

Lord ASHBOURNE: My lords, I concur. I only had an

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L. C. C.	opinion is confined to that.
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— WEST HAM.	Lord MACNAGHTEN and Lord MORRIS also concurred.
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In the Erith Case, judgment of the Court of Appeal affirmed, and appeal dismissed with costs.

In the West Ham Case, judgment of the Court of Appeal reversed, and judgment of the Queen's Bench Division restored, the respondents to pay the costs here and below.

In the St. George's Union Case, judgment of the Court of Appeal reversed, the respondents to pay the costs here and below.



C. A.	MAYOR, ALDERMEN AND BURGESSES OF SOUTHPORT <i>v.</i>
1893.	ORMSKIRK UNION.
November 4.	<i>Gas Pipes—Use of, for the Supply of Gas—Occupation or Easement.</i>

The borough of Southport adjoined the township of Birkdale. The corporation of Southport were the owners of gas works situated in the borough, and the local board of Birkdale were the owners of gas pipes and mains within the township, and by a local Act the local board were given the exclusive right of laying pipes, &c. within their township, and were bound for ever to keep the existing and future pipes, &c. in good repair and condition, and to afford the use thereof to the corporation of Southport for the supply of gas within the township of Birkdale in consideration of certain payments.

Held, by the Court of Appeal, affirming the decision of the Queen's Bench Division, that the corporation of Southport had an easement only, and were not the occupiers of the pipes, &c. within the township of Birkdale.

APPEAL from a decision of the Queen's Bench Division, reported *supra*, p. 355 (a). MAYOR, &C. OF SOUTHPORT

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Poland, Q.C., and *A. T. Lawrence*, for the Ormskirk Union. [The only addition to the arguments in the Court below was the citation of *R. v. East London Waterworks Co.* [1852], 18 Q. B. 705, and *Metropolitan Ry. Co. v. Fowler*, [1893] A. C. 416, decided since the decision in the Queen's Bench Division.]

J. F. Leese, Q.C., and *S. T. Evans*, for the Corporation of Southport, were not called upon to argue.

LORD ESHER, M.R.: In my opinion this is as clear a case as possible. Here we have the local board of Birkdale with power to lay down mains for the supply of gas; the local board are the sole judges of how that shall be done, and in what position in the streets. When the pipes are laid down, are not the local board the statutory owners? If so, and if they have laid them down and have not given up their rights, are they not both owners and occupiers? This is like the old cases of the water companies who had power to lay down pipes; they were owners of the pipes, and it was held that by the pipes they occupied land. Now the Birkdale Local Board were in the same position, and unless they have given up that position they are probably rateable, on which point, however, I express no opinion. In practice, it appears that the corporation of Southport have undertaken the work of making connections with the service pipes. I doubt whether that is authorized by the Act, and whether the local board of Birkdale might not say to the corporation, you shall do it only under our inspection; if, for instance, the corporation did the work in a way which made it more

(a) This appeal was heard while this book was passing through the press, and too late to admit of a report being appended to the report of the proceedings in the Queen's Bench Division, *supra*, p. 355.

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difficult to keep the pipes in repair. The local board have the power of laying mains and pipes in their township generally, and not in any particular part of their township. They have the duty of keeping the mains in repair; so far, therefore, they must be in possession. They have parted with their rights only to this extent, that they have a parliamentary obligation "to afford the corporation the use of the mains for the supply of gas for public and private purposes within the township." With this exception they have kept everything, and they have not given up the occupation. In my opinion, the judgment of the Court below was perfectly right.

KAY, L.J. : I am of the same opinion. It is impossible to maintain that persons having merely the exclusive use have more than a mere easement. The corporation have not taken anything more than this from the owners of these mains. The case is exactly like the case of an owner of land granting to another person the exclusive right of sending sewage through a drain in that land. Or it is like the case of a man who has a wire used for the transmission of electricity, and who grants to another the exclusive right of using the wire for such transmission. It is impossible to say that, in either case, the grantee would occupy land. In my opinion, the Court below were quite right, and the corporation have nothing more than a mere easement in the exclusive use of the pipes.

Appeal dismissed.

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